

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP); 08-01420(JMP)(SIPA)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

In the Matter of:

LEHMAN BROTHERS INC.

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 3, 2010

9:04 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

1 EVIDENTIARY HEARING re 60(b) Motions

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1 P R O C E E D I N G S

2 THE COURT: Good morning. Be seated, please. I'm
3 informed that the live note court reporter is going to be late
4 this morning, and as a result, we're going to start without
5 her. And I've indicated that she can simply walk right in
6 whenever she arrives.

7 MR. UNIDENTIFIED: Thank you, Your Honor.

8 MR. GAFFEY: Your Honor, I don't mean to interrupt,
9 but we have a revised calendar that'll give Your Honor an idea
10 of where we're going to go this week.

11 THE COURT: Okay. I'd appreciate that.

12 MR. GAFFEY: We sent this off to Barclays' counsel
13 yesterday. Again, it's an estimate, but may I approach?

14 THE COURT: Yes. Thank you. Okay.

15 MR. BOIES: Thank you, Your Honor. We were examining
16 Mr. Hughes.

17 THE WITNESS: Good morning, Your Honor.

18 THE COURT: Good morning.

19 JOHNATHAN HUGHES, WITNESS, PREV. SWORN

20 CROSS-EXAMINATION

21 BY MR. BOIES:

22 Q. Good morning, Mr. Hughes.

23 A. Good morning, Mr. Boies.

24 Q. During your examination by Movant's Counsel, you were
25 asked some questions about the additional assets that Lehman

1 was looking for late in the week, and you said that you didn't
2 consider those additional assets to be added to the deal, you
3 considered those additional assets identified for the deal.

4 Can you explain what that distinction was?

5 A. Yes. In my view, by definition, the assets they refer to
6 were already being used in the business of Lehman Brothers. I
7 think as I mentioned on Friday, the deal at its heart was an
8 attempt to maintain as much of the Lehman business as possible.
9 And the deal that was constructed was to deliver to Barclays as
10 much of that business as Barclays felt was appropriate to take
11 on.

12 That led to certain assets being excluded, but otherwise,
13 to the extent there were assets used in the business, they were
14 due to be delivered to Barclays, so that was the purchase. The
15 clearance bulked assets and the 15(c)(3) assets were, I think
16 by definition, used in the business of Lehman Brothers.

17 So from that perspective, they certainly were at no point
18 added to the deal. They were, in my view, already within it.
19 My point about identification was that it was clearly
20 important, particularly on that Friday morning for Barclays to
21 be able to see what the value of the purchased assets was going
22 to be. Albeit, bearing in mind there was huge uncertainty with
23 respect to those values, it was clearly important to Barclays
24 to do its best to identify what that value might look like.

25 So there was clearly an attempt to identify those assets,

1 and for better or worse, Barclays made a judgment about the
2 value of those assets at the time. So in my view, they were
3 always within the business, and therefore, were coming as part
4 of the deal. In any event, whether they had been identified or
5 not, it was nevertheless important to identify them on that
6 Friday morning.

7 Q. You were also asked some questions about comparing the 250
8 million dollar cash consideration with the 769 million dollars
9 that you were getting in connection with the 15(c)(3) provision
10 of the clarification agreement. Do you recall that?

11 A. I do.

12 Q. And Movant's Counsel suggested that there was a disparity
13 between those two numbers. Do you recall that?

14 A. I do and I think I agree with him.

15 Q. Do you agree that that's a relevant disparity?

16 A. Not at all.

17 Q. Why?

18 A. Again, the amount 250 was one portion of the
19 consideration. The 15(c)(3) assets, as I think I've just
20 described, were clearly part of the business and so they were
21 coming in any event.

22 Furthermore, I think that there was relatively few of the
23 purchased assets that were described in valuation terms, either
24 in the APA or I believe before the Court at the sale hearing,
25 and the same is true of liabilities. Clearly, as I think has

1 been said now many times, not just by me, it was extremely
2 difficult to tag any particular category of assets with a
3 particular certain value.

4 That 769 was a representation of value by Lehman Brothers,
5 but again in common with other assets, Barclays had a
6 relatively limited opportunity to figure out, in fact, whether
7 that was a good estimate. There were other aspects of the
8 purchase that were not identified in the clarification letter.
9 There were other aspects of the purchase that were not
10 identified with particular valuations.

11 So for example, the res's, which is the abbreviated term
12 for the residential mortgages that were once part of the
13 discussion, that had a value, I believe, of roughly 2.7 billion
14 dollars, an amount I think appreciably more than 769. Equally,
15 the 45 billion dollars' worth of cash that Barclays extended to
16 Lehman Brothers on the Thursday was also an amount that didn't
17 receive a lot of attention in the clarification letter.

18 Q. Let me see if I can break that down a little bit. First,
19 are you saying that your understanding of the deal was that
20 Barclays was buying Lehman's broker dealer business, and all of
21 the assets used in that business, except to the extent that
22 they were specifically excluded?

23 A. Absolutely. I think that's very clear from the APA.

24 Q. And are you saying that the entire package of the assets
25 and -- that you received and the cash you paid, the employees

1 that you took on, the business you took on, the liabilities you
2 assumed, was all together the deal and that you can't break out
3 any specific piece of consideration, and match it with another
4 piece of consideration from the other side?

5 A. Correct.

6 Q. Now, you said that there was a list of specifically
7 identified purchased assets in the APA and in the clarification
8 letter. Do you recall that?

9 A. Yes.

10 Q. Now, was that an exclusive list or a non-exclusive list?

11 A. I think again it was plain in the APA that it was a --
12 that the purchased assets included a list of, I think, nineteen
13 specific assets. But it's very plain in the APA, to my mind,
14 and it was to Barclays at the time, that that was an included
15 list, but without limitation. And again, it would've been
16 impossible at that point, I think, to -- in the time available,
17 to identify each and every asset that was to come with that
18 broker dealer business that you described.

19 Q. Now, of the nineteen assets that you indicate, you recall
20 being identified in the APA, were valuations associated with
21 all those?

22 A. No, as I recall, there were valuation estimates given with
23 respect to I think just two of the assets, I could be wrong --
24 two or three, but not with respect to the others.

25 Q. In the APA, is there any stated value for all of the

1 assets that Barclays is assuming or receiving?

2 A. No. Again, I don't think it would've been feasible to
3 arrive at such a number in the time available.

4 Q. At any place in the APA or the clarification letter, is
5 there any total valuation as to the liabilities and obligations
6 that Barclays is assuming?

7 A. Again, the answer to that is no, and I think for the same
8 reason.

9 Q. And my first question asked about the APA, but I want to
10 broaden it now to both the APA and the clarification letter.
11 Is there anywhere in the APA or the clarification letter that a
12 total amount or value for the assets that Barclays was
13 receiving is stated?

14 A. No.

15 Q. Is there anywhere in the APA including the clarification
16 letter, where there is any agreement that the assets that
17 Barclays is acquiring will be roughly equivalent to the value
18 of the liabilities it is assuming and consideration that it's
19 paying?

20 A. No, there is no such provision, and there was no such
21 agreement, nor were there any such discussion, as far as I know
22 of.

23 Q. Was there any representation or warranty or condition or
24 covenant by either Barclays or Lehman, as to the value of
25 assumed liabilities or the value of assets that Barclays was

1 acquiring?

2 A. No. Once again, there were estimations given with respect
3 to one or two of the assets and liabilities, but that was the
4 extent of it.

5 Q. Now, during the examination, Counsel for the Movants
6 showed you a document that has been marked as Movant's Exhibit
7 441, which is the order approving the sale order, and they
8 directed your attention to a paragraph there, that I want to
9 take you to as well. And that was paragraph M, relating to
10 consideration.

11 And you were directed to your attention to the words where
12 it says, "The consideration constitutes reasonably equivalent
13 value." Do you see that?

14 A. I do.

15 Q. Now, as I think you pointed out, the next three words, "or
16 fair consideration." Do you see that?

17 A. Yes.

18 Q. And how did you interpret that, if at all?

19 A. I don't think I interpreted it before Friday afternoon,
20 but I interpret it as being an expression of a requirement that
21 there be fair consideration delivered in the purchase and sale.

22 Q. Now, it then goes on to say that "These terms are defined
23 under certain statutes, the Uniform Frauds and Transfer Act,
24 the Uniform Fraudulent Conveyance Act, and Section 548 of the
25 Bankruptcy Code." Do you see that?

1 A. I do.

2 Q. Are you an expert in any of those provisions?

3 A. Unfortunately not.

4 Q. Do you know what the technical definition of those terms
5 would be under any of those provisions?

6 A. No.

7 Q. You're aware that there was originally a true-up provision
8 in the APA; is that correct?

9 A. That is correct, and it was removed.

10 Q. I'm sorry, what did you say?

11 A. I said it was also removed.

12 Q. It was removed. That was going to be my next question.

13 I'd like to direct your attention next to Movant's Trial
14 Exhibit 100, and particularly to page 95 that Movant's Counsel
15 asked you about. And the next to last paragraph on that page,
16 where it says, "The excess of the fair value of net assets
17 acquired over consideration paid resulted in 2.262 billion
18 pounds of gains on acquisition." Do you see that?

19 A. I do.

20 Q. Now, you were asked a number of questions about a day one
21 gain. Do you recall that?

22 A. I do.

23 Q. And as you interpreted the term "day one gain", is that
24 equivalent to a gain on acquisition, as indicated here?

25 A. I don't think it's -- the indication here is necessarily a

1 day one gain. I think this gain on acquisition includes a
2 number of factors that from an accounting standpoint are
3 required to be reflected on the acquisition balance sheet.

4 Q. Let me break that up. And I want to distinguish between
5 two concepts. One concept is when the gain is figured as of,
6 and the other is when the gain is calculated. Okay? Do you
7 understand that distinction?

8 A. I do.

9 Q. Now, first, am I correct that if you are thinking about
10 when the gain is calculated as of, that is, if you're
11 calculating whether or not Barclays had a gain when it closed
12 the transaction, the terms on acquisition or perhaps the more
13 colloquial term, a day one gain, would be equivalent, correct?

14 A. Yes.

15 Q. But either of those two formulations would relate to a
16 calculation that could not be performed the day of the closing,
17 correct?

18 A. Also correct, yes.

19 Q. Okay. Now, what are some of the reasons why the question
20 of whether or not you could have or did have a gain on
21 acquisition, what was sometimes referred to during your
22 examination as the day one gain, could not be calculated on day
23 one or the day of the closing?

24 A. There may be more than two reasons, but there are two
25 important reasons, at least to my mind. First of all, that the

1 calculations with respect to the valuations of a significant
2 proportion of the assets and liabilities that were the subject
3 of the transaction, were not capable of being calculated on
4 September 22nd.

5 Secondly, I believe that some of the numbers that go into
6 establishing what the overall acquisition gain might be are
7 dependent on a number of other factors. Again, I'm not an
8 accountant, but one example that I have become aware of before
9 and after this acquisition is intangible assets, for example.
10 So that the value that Barclays derives through the -- through
11 various intangible assets also needs to be calculated after the
12 closing time, and after the closing date. And I believe it's
13 right to say that all of those factors go into what ultimately
14 the acquisition gain might prove to be.

15 Q. And realizing that you're not an accountant, were you
16 generally aware that Barclays' view and its outside auditors'
17 view, as to what, if anything, would be the gain on
18 acquisition, was something that changed significantly over the
19 period of time immediately following closing?

20 MR. GAFFEY: Objection to the outside auditors' view,
21 Your Honor, hearsay.

22 THE COURT: Sustained as to the outside auditors.

23 Q. Let me break it down and ask you first whether you are
24 aware that Barclays' view, as to what gain, if anything, would
25 be achieved on acquisition from the Lehman transaction changed

1 significantly in the days immediately preceding the closing and
2 the days and weeks following the closing?

3 A. Yes. Again, at least for the two reasons that I just
4 tried to describe, there was enormous uncertainty around the
5 valuations that were necessary to arrive at those figures. And
6 that uncertainty, with respect to a number of categories of
7 assets continued for quite some period of time.

8 Q. And wait a moment before answering this question, because
9 there may be an objection. Was Barclays' understanding that it
10 was difficult to determine what the day one acquisition gain,
11 if any was, informed in part by the views, whatever they were,
12 of the outside auditors that Barclay had retained?

13 MR. GAFFEY: No objection if the answer's yes or no,
14 Your Honor.

15 THE COURT: Apparently there's no objection, but
16 there's also a qualification. Can you answer that yes or no?

17 THE WITNESS: If Mr. Boies could restate the question,
18 certainly.

19 BY MR. BOIES:

20 Q. Certainly. You testified that Barclays' view was that in
21 the days immediately preceding and the days and weeks following
22 the closing, it was uncertain what, if anything, the gain on
23 acquisition would ultimately be, and the estimates of that
24 changed significantly over that period of time, correct?

25 A. Yes.

1 Q. Was -- and this is a yes or no question. Was Barclays'
2 view in that respect informed, in significant part, by the
3 views, whatever they were, of Barclays' outside auditors?

4 A. Yes.

5 Q. Now, you have said two things, and Counsel for the Movant
6 suggested that they were or might be somehow inconsistent. You
7 have said that the deal was one that was irrespective of the
8 value of the assets and liabilities, correct?

9 A. I think I did use that phrase once upon a time.

10 Q. And you've also said that as of September 19th, if
11 Barclays did not believe that there was enough value in the
12 deal to justify going forward, Barclays was not prepared to go
13 forward. Do you recall that?

14 A. Yes.

15 Q. Now, do you see any inconsistency at all between those two
16 beliefs?

17 A. No, I don't. I -- by using the phrase irrespective of
18 values with respect to the deal, my point simply was to perhaps
19 inartfully make plain that the transaction, as I've described
20 it on a number of occasions now, was not -- was one that was
21 necessarily to occur without a definition around values. And
22 therefore, to that extent, it was irrespective of what the
23 actual values proved it to be; and I think as I've also
24 mentioned, Barclays ultimately was taking a substantial amount
25 of risk in pursuing a transaction without that level of

1 certainty.

2 When it comes to identifying values, be it on September
3 the 19th or at any other point in time, clearly Barclays was
4 doing its best to minimize the risks that were present in the
5 transaction. And while it was not in that period of time
6 feasible to identify with precision what the valuations were,
7 the reality was that the better the identification in value
8 around assets, the more likely it was that Barclays could reach
9 a judgment about relative values.

10 And so to that extent, I don't view the phrases as
11 inconsistent at all. On the one hand, the transaction was
12 going to happen without certainty with respect to values, if
13 the parties reached agreement. But during the process, it
14 clearly was important to Barclays to do as much as it could in
15 the time available to limit what the risks might prove to be.

16 Q. Now, in connection with that last answer, you referred to
17 the risks that Barclays was taking on. Now, do you recall that
18 they, the Movant's Counsel, showed you some testimony by Mr.
19 Robert Diamond, about an asset liability mismatch --

20 A. Yes.

21 Q. -- and about the Barclays' intention and commitment that
22 there be what Mr. Diamond referred to as an asset liabilities
23 mismatch?

24 A. I do remember that, yes.

25 Q. Now, you were present at Mr. Diamond's deposition, were

1 you not?

2 A. I was.

3 Q. And did Mr. Diamond, in that deposition, make clear that
4 the commitment to attempt to have an asset liability mismatch,
5 was something that could not be guaranteed?

6 MR. GAFFEY: Objection, Your Honor. Calls for the
7 witness to characterize the absent Mr. Diamond's testimony.
8 Mr. Diamond will be here Friday.

9 THE COURT: I sustain the objection, although would
10 permit questioning to the extent there's a page and line
11 reference that the witness actually remembers that deals with
12 the subject, but I also note, although we're not dealing with
13 the best evidence rule here, that if Mr. Diamond is going to be
14 here, we don't need this witness's characterization of his best
15 recollection of what he said one day in the past. I'll hear it
16 myself from him, presumably.

17 MR. BOIES: Your Honor, in that case, I will save the
18 time and pass that.

19 THE COURT: Fine.

20 BY MR. BOIES:

21 Q. Going back to the question of the relationship, if any,
22 between assets and liabilities, one of the questions Movant's
23 Counsel asked you was whether or not there were any meaningful
24 liabilities that were not disclosed to the court. Do you
25 recall that generally?

1 A. I do.

2 Q. And one of the things that you said in one of your
3 answers, was that there were liabilities, for example, in the
4 REPO transaction, that were not necessarily disclosed in full
5 because the actual liabilities were not known. Do you recall
6 that?

7 A. I don't recall that specific language, but I recall the
8 topic, yes.

9 Q. Okay. Now, were there other liabilities that were not
10 fully disclosed, that is, it might have been disclosed that the
11 liabilities exist, but the valuation of those liabilities was
12 not disclosed?

13 A. I believe so, yes.

14 Q. All right. For example, with respect to -- take exchange
15 traded derivatives, you are aware that Barclays was assuming
16 certain obligations with respect to Lehman's exchange traded
17 derivatives, correct?

18 A. Yes, I believe the agreement was that we would take on the
19 whole of the exchange traded derivatives business, which
20 included all of the liabilities associated with that business.
21 It was notable on a number of levels, but particularly in that
22 sense, that all of those liabilities associated with that part
23 of the business, Barclays agreed to acquire.

24 Q. And was there ever any estimate that the parties discussed
25 and agreed to prior to closing, as to what the magnitude of

1 those exchange traded derivative liabilities were?

2 A. No, there was no such disclosure. My recollection is that
3 there were discussions among representatives of Barclays and
4 Lehman Brothers on the subject of exchange traded derivatives,
5 but that prior to the sale hearing, Barclays had no reliable
6 information of any sort with respect to the amounts of those
7 liabilities.

8 Q. Now, with respect to exchange traded derivatives, was it
9 your understanding that Barclays was acquiring not only the
10 derivative positions themselves, but included there, any margin
11 or collateral associated with those positions?

12 A. Absolutely, yes.

13 Q. Was that important to Barclays?

14 A. It was certainly important. I would say that it's
15 feasible to consider taking on business in exchange traded
16 derivatives without some margin, but only if it's being very
17 specifically and very deliberately constructed. Otherwise, I
18 would think it an utterly irrational thing for somebody to take
19 on an exchange traded derivatives business without taking all
20 of the margins associated with it.

21 Q. And I forget exactly the words you used, and we don't have
22 Live Notes this morning, but you said that it might be
23 conceivable under certain circumstances. What were those
24 circumstances again?

25 A. Well, I think I could conceive of a situation in which a

1 specific exchange traded derivatives contracts would be
2 executed, and there would be a deliberate attempt to
3 specifically hedge one contract, for example, with another. I
4 don't think there was any such aspect to the business that
5 Barclays acquired from Lehman Brothers, but with the exception
6 of a very deliberate attempt to hedge and to match a particular
7 set of exchange traded derivatives, I don't -- it would be
8 inconceivable to me that one would take on a business without
9 the margin. The two are inextricably linked.

10 Q. In the context of the transaction that Barclays was doing
11 with Lehman's where you were taking all of the exchange traded
12 derivative positions, is it conceivable to you that someone
13 would have acquired those positions without acquiring the
14 associated collateral and margin?

15 A. Certainly not.

16 Q. Now, with respect to the issue of margin, you were asked
17 what the amount of the margin in dispute between Barclays and
18 the trustee was in terms of cash and cash equivalents. Do you
19 recall that?

20 MR. BOIES: And this is at page 1915 for Counsel's
21 reference.

22 A. I recall being asked about the total amount in dispute, or
23 at least I thought that was the question. I do recall also
24 questions about cash and cash equivalents.

25 Q. And you said that you didn't know what the specific number

1 was, but you thought at some point there was some discussion
2 around four billion dollars as a total amount in dispute. Do
3 you recall that?

4 A. I recall that answer. In giving it, I was not referring
5 specifically to cash and cash equivalents. It was my perhaps
6 loose recollection of what the total amount in dispute between
7 the parties may be, with respect to exchange traded derivatives
8 as a whole.

9 Q. And that would include both cash and securities; is that
10 correct?

11 A. Correct. And it would include assets already delivered by
12 the trustee and assets yet to be delivered.

13 Q. Let me ask you to turn, and I think -- do you still have
14 the book that Movant's Counsel gave you up there?

15 A. I have two books.

16 Q. Two books. Would you turn to Barclays Exhibit 110. This
17 is the analyst's report that Movant's Counsel asked you about.

18 If you don't have it handy, let me give you --

19 A. I can see it on the screen.

20 Q. What? You can see it on the screen, okay.

21 A. On the screen, yeah.

22 Q. Now, you recall that this was an analyst's report, or I'm
23 sorry, an analyst call that occurred on Wednesday, September
24 17th, 2008; is that correct?

25 A. That's correct.

1 Q. And Movant's Counsel directed your attention, I think to
2 page seven. And a portion in the middle of the page where
3 there is a statement that "What we have taken is a portfolio of
4 trading assets and liabilities that are first of all derisked."
5 Do you see that?

6 A. I do.

7 Q. And he asked you whether the assets that you had taken in
8 this transaction had been derisked. Do you recall that?

9 A. I do.

10 Q. And you said you thought that this related to a comparison
11 of this transaction with another transaction. Do you recall
12 that?

13 A. I do.

14 Q. Now, let me show you a portion of this exhibit that
15 Movant's Counsel did not direct your attention to, and that is,
16 on page two, and it's the fourth paragraph from the bottom.
17 And would you read that paragraph into the record, please.

18 A. Yes. It says, "The acquisition of these businesses and
19 assets significantly enhances BarCap's position in the United
20 States, by a transaction that is derisked by excluding the
21 overwhelming majority of Lehman risk assets."

22 Q. And does that help put in context the portion of the
23 exhibit that Movant's Counsel showed you?

24 A. In part, yes. I was trying not to speak for Mr. Barley on
25 Friday afternoon. I think it does in part explain the

1 difference between the earlier transaction that had been the
2 subject of discussion among Barclays and Lehman Brothers, and
3 there were also other aspects of that transaction that I think
4 involved greater risk than the transaction that it was actually
5 consummated.

6 Q. And you're comparing there what has sometimes been
7 referred to as Lehman 1 with Lehman 2; is that correct?

8 A. Yes.

9 Q. And this analyst call is about Lehman 2, correct?

10 A. Yes.

11 Q. And --

12 A. But it does refer to Lehman 1.

13 Q. But it does refer to Lehman 1. And in what sense was
14 Lehman 2 derisked, compared to Lehman 1?

15 A. Well, I think in addition to the point that we've just
16 referred to and you've highlighted, Lehman 1 was a transaction
17 which involved the vast proportion, if not the whole of the
18 Lehman business. And therefore, a size of balance sheet which
19 was substantially greater than one that we were looking at,
20 that involved substantially greater numbers of assets and
21 liabilities. So it was necessarily I think a much more risky
22 transaction in that environment at the time.

23 Q. Now, whatever derisk means in this context, is it the case
24 that anyone who saw this on or about September 17th, knew that
25 it was Lehman's -- it was Barclays' view that the Lehman

1 transaction had been derisked in some way?

2 A. I'm sorry, would you repeat that?

3 Q. Sure. I messed up the question by confusing Lehman and
4 Barclays. I apologize.

5 Is it the case that whatever derisk means, anyone who read
6 this on or about September 17th, 2008 would've known that it
7 was Barclays' view that the transaction had been quote
8 derisked, close quote in some way?

9 MR. GAFFEY: Objection, Your Honor.

10 THE COURT: Sustained, particularly as it relates to
11 anyone who reads this.

12 Q. Barclays was not keeping its view concerning the extent to
13 which the Lehman transaction had been derisked secret, was it,
14 sir?

15 A. Certainly not.

16 Q. And Barclays' view as to the extent to which, if any, the
17 transaction had been derisked was there for anybody to see,
18 correct, sir?

19 MR. GAFFEY: Objection, Your Honor.

20 THE COURT: The same issue as for anyone to see which
21 ties into anyone who reads this, although the difference
22 between anyone can see and anyone who reads this, is that it is
23 a reference to there being disclosure that was not hidden.

24 MR. BOIES: Yes, Your Honor.

25 THE COURT: I accept that, although suggest that the

1 anyone can see reference be deleted, and that you simply make
2 reference to the fact that there was no effort to conceal or
3 hide, and that there was conspicuous disclosure, which I can
4 see myself.

5 MR. BOIES: Okay.

6 THE COURT: The question is to whom, which of course,
7 is not covered by any of the questions.

8 MR. BOIES: Your Honor, I will adopt that.

9 BY MR. BOIES:

10 Q. There was no effort to conceal Barclays' view in this
11 respect, correct, sir?

12 A. That's correct.

13 Q. And indeed this was posted on Barclays' website after it
14 occurred, correct, sir?

15 A. That's correct.

16 Q. Let me ask you to look at some other portions of this, and
17 in particular, staying on page two, I want to go to the third
18 paragraph from the top, the last sentence. It says, "We are
19 acquiring trading assets with a current estimated value of 72
20 billion dollars and trading liabilities with a current
21 estimated value of 68 billion dollars for a cash consideration
22 of 250 million dollars." Do you see that, sir?

23 A. I do.

24 Q. And there was never any attempt by Barclays to conceal or
25 restrict access to Barclays' view in this respect, correct,

1 sir?

2 A. That's also correct.

3 Q. If you'd go down two paragraphs where it says, "In fact,
4 the transaction is capital ratio accretive without additional
5 equity issuance." Do you see that?

6 A. I do.

7 Q. And does that mean that there's going to be a gain on
8 acquisition?

9 A. Essentially, yes.

10 Q. And it then goes on to say, "The source of the accretion
11 is the negative goodwill from the transaction which amounts to
12 about two billion U.S. dollars post-tax." Do you see that?

13 A. I do, yes.

14 Q. And was there any effort by Barclays at any time to
15 conceal its view that this was going to result in a two billion
16 dollar U.S. dollar post-tax gain on acquisition from anyone?

17 A. There was no such effort.

18 Q. Let me ask you to go to the next page, page three, at the
19 bottom of the page, the last two sentences. Where it says,
20 "There is a small amount of mortgage paper which has been
21 heavily written down and included in those numbers. So we have
22 been through a process where we took the original marks,
23 reviewed them, and then took some further write-downs, but that
24 is against the very small portion, less than five percent of
25 that book." Do you see that?

1 A. Yes.

2 Q. And was there any effort by Barclays to conceal that with
3 respect to the amount of mortgage paper that they had taken on,
4 it had been heavily written down and then written down further?

5 A. No, there was no such attempt.

6 Q. Let me ask you to look at page four. The first
7 significant paragraph, the third sentence which it says, "First
8 and foremost, as Chris said, we got to choose which inventory
9 came with the deal." Do you see that?

10 A. Yes.

11 Q. And was there any effort by Barclays ever to conceal its
12 view that Barclays got to choose which inventory came with the
13 deal?

14 A. No, there was no such effort here, and I believe it was
15 always part of the discussion with Lehman Brothers that we were
16 interested to acquire certain assets, but certainly not
17 interested to acquire others.

18 Q. Let me ask you to look at page five, and the first -- I
19 want to begin with the first paragraph, which is a question.
20 And in the fourth sentence there, the questioner, which is Tom
21 Rayner from CitiGroup says, "You have a buffer between the
22 trading assets and liabilities of four." Do you see that?

23 A. Yes.

24 Q. And then I want you to go down to the answer, the second
25 sentence, where it says, "We absolutely expect to preserve that

1 buffer." Do you see that?

2 A. I do see it, yes.

3 Q. And did Barclays ever make any effort to conceal its
4 belief that it would preserve a buffer of approximately four
5 billion dollars between the trading assets and trading
6 liabilities?

7 A. No, indeed I think it was important to Barclays that to do
8 as good as a job as it was able to do at the time to explain to
9 shareholders and investors and the analyst community, which was
10 part of the audience here, that the transaction was in the
11 shareholders' interest, and to describe to those shareholders
12 and investors that there was likely a buffer of that size was
13 an important piece of information for the market at the time.

14 So not only was there not an attempt to hide it, it was
15 important to disclose it.

16 Q. Now, you were asked by Movant's Counsel whether other than
17 this analyst call and other than a press release, you were
18 aware of a single public record document that announced prior
19 to the sale on the 19th, that there would be a gain for
20 Barclays. Do you recall that question generally?

21 MR. BOIES: And that's at page 1840, for Counsel's
22 reference.

23 A. Yes, I do.

24 Q. And you answered, "Assuming by sale motion, you mean any
25 of the surrounding papers associated with the court

1 proceedings, no, not aware of anything else." Do you recall
2 that?

3 A. Yes.

4 Q. Now, even though that you're not aware of any of the other
5 surrounding papers associated with the court proceedings
6 talking about a gain, are you aware that there were a number of
7 newspaper and other media reports concerning Barclays'
8 announcement that it would have a gain on acquisition?

9 A. I do recall there was a lot of media commentary about the
10 transaction at the time. When I was asked the questions to
11 which you refer, I made the assumption that we were referring
12 to documents. I didn't include media articles in that term.

13 MR. BOIES: Let me ask that we hand out Barclays Book
14 3.

15 THE COURT: Thanks.

16 Q. I'd like to direct your attention to tabs thirteen and
17 seventeen -- through seventeen; thirteen, fourteen, fifteen,
18 sixteen, and seventeen, which are Barclays Exhibits 796, 797,
19 798, 115 and 111.

20 MR. BOIES: And I would offer these exhibits for the
21 limited purposes of showing the extent to which the press
22 reported prior to September 19th that Barclays planned to book
23 a gain on acquisition.

24 THE COURT: Is there any objection to the receipt of
25 these media stories that appear to be taken off of the

1 internet?

2 MR. GAFFEY: Not for that limited purpose, Your Honor,
3 no.

4 THE COURT: Fine. They're admitted for that limited
5 purpose.

6 (Barclays Exhibits 796, 797, 798, 115 and 111 admitted.)

7 BY MR. BOIES:

8 Q. Now, did there come a time, as you understood it, when
9 Lehman discovered and Barclays perhaps discovered as well, that
10 Lehman was not going to be able to deliver the assets that it
11 had promised on September 16th to deliver?

12 A. Yes.

13 Q. And what was your understanding as to why that was so?

14 A. At the time, the representatives of Lehman and Barclays
15 discussed the apparent transactions of counterparties in the
16 market between September the 16th and the 18th, which led to a
17 substantial diminution in the size of the pool of assets that
18 was available to be conveyed in the transaction. There was
19 also an attendant, and again I think significant, decrease in
20 the value of all of those assets.

21 Q. Now, at the same time all that was happening, did Barclays
22 advance a sum of money to cover what had previously been a
23 Federal Reserve Bank REPO financing transaction for Lehman
24 Brothers?

25 A. Yes, on the Tuesday afternoon, we had received a second

1 request from the New York Fed to stand in their shoes, or to
2 replace them in that REPO transaction and so on the -- as it
3 happened on the 18th, we conveyed forty-five billion dollars in
4 cash early that morning to Lehman Brothers.

5 Q. Did conveying that forty-five billion dollars increase to
6 any extent the risk that Barclays faced in this transaction?

7 A. I think that the risk increased dramatically at that
8 point. Prior to that point, the discussion among the parties
9 was -- concerned the conveyance of some long positions and some
10 short positions, which by their nature, didn't require
11 certainly at that point in time Barclays to follow with
12 anything. I took on -- it might have taken on certain
13 liabilities in association with those long positions, but
14 certainly there was a substantial difference in our mind
15 between that discussion on the one hand, and one which required
16 us, and in fact took place, to convey forty-five billion
17 dollars in cash. Put another way, Barclays went short forty-
18 five billion dollars in cash, and had to wait for a substantial
19 volume of securities to come in with the aim of exceeding that
20 amount.

21 As it turned out, that never transpired. So I think the
22 relative risks of Barclays went up quite substantially at that
23 point in time.

24 Q. And did the fact that Barclays' risk was going up
25 substantially and the value of Lehman's assets was going down

1 substantially affect at all the need to have Lehman identify
2 additional specific assets that could help Barclays become
3 assured that it would be getting the assets that it needed to
4 feel comfortable to do the deal?

5 A. Absolutely, yes. There was considerable concern on the
6 point of Barclays at that point. We had, as I say, sent forty-
7 five billion dollars to Lehman Brothers at a time when all of
8 those assets available to be conveyed in the transaction
9 appeared to be dwindling, both in size and in value. The
10 effort therefore, to identify at that point in time what the
11 value of the purchased assets could be, was crucial.

12 Q. And as you understood it, on September 19, did Barclays
13 have the right to walk away from the deal, particularly in
14 light of the fact that Lehman was unable to deliver what it had
15 promised in the APA?

16 A. Absolutely, yes, that was clearly in Barclays' mind at
17 that point in time, and I think it was right, we did have the
18 right to walk away.

19 Q. And according to your understanding, would Barclays, in
20 fact, have walked away if assets had not been identified that
21 gave it reasonable assurance that it would receive the assets
22 that it felt it needed to be comfortable in closing the deal?

23 A. Yes, I believe that would've happened.

24 Q. And I think you've identified two of those assets as being
25 what you refer to as the clearance box assets and the 15(c)(3)

1 assets, correct?

2 A. Correct.

3 Q. And did Lehman represent to Barclays what the clearance
4 box assets were, in Lehman's view, worth approximately?

5 A. Yes. When the topic first was raised, Lehman suggested
6 they were worth in the region of 1.9 billion dollars.

7 Q. Now, let me turn to the 15(c)(3) assets for a moment. Did
8 what Lehman represented those assets to be worth change over
9 the course of the day or 36 hours that those assets were being
10 discussed?

11 A. I'm not sure that the total value of the assets changed or
12 the estimation of that value changed. There was a change in
13 the amount of those assets that were agreed to be conveyed.

14 Q. Originally, what was the amount of those 15(c)(3) assets
15 that Lehman was agreeing to convey to Barclays?

16 A. Initially, the suggestion was, that the words
17 approximately 1.7 billion dollars' worth of value that Lehman
18 could convey from their reserve account or the 15(3)(c)
19 account.

20 Q. And did that get reduced later on?

21 A. Yes. Ultimately it was agreed to be 769 million dollars.

22 Q. And the 769 million dollars from the 15(c)(3) accounts and
23 the 1.9 billion dollars from the clearance box asset account,
24 total approximately 2.7 billion dollars, correct?

25 A. I think it's slightly less than that, but approximately,

1 yes.

2 Q. Now, if Lehman Brothers on September 19th or 20th had
3 said, we're not going to convey to you the clearance box assets
4 and the 15(c)(3) assets. According to your understanding,
5 would Barclays have been prepared to close?

6 A. My understanding is that we would not have closed if that
7 had been so. You know, not only was it not said, but it was
8 also inconsistent with the deal that we'd agreed to that point,
9 namely that all of the assets in the business would be conveyed
10 with the business. As I've said, the idea was to maintain as
11 much of an operational business as we could.

12 Q. You're aware in this proceeding that the Movants, or at
13 least some of them at least, perhaps all, are taking the
14 position that Barclays is not entitled to the 1.9 billion
15 dollars, and is not entitled to receive the 769 million
16 dollars; is that correct?

17 A. That seems to be what they're suggesting, yes.

18 Q. Now, if Lehman had said that at the time that the deal was
19 being considered on September 19th, 2008, would Barclays have
20 been prepared to go ahead with the deal?

21 A. I don't think so, no.

22 Q. There was a clarification letter that was drafted,
23 correct?

24 A. Correct.

25 Q. And that clarification letter began to be drafted almost

1 immediately after the APA was signed on September 16th,
2 correct?

3 A. That is correct, yes.

4 Q. And why is that?

5 A. I think it reflected two things. One, that there were
6 aspects of the APA that upon signature were known among the
7 parties to be the subject of ongoing discussion; and indeed it
8 became apparent very quickly indeed that there were aspects of
9 the APA which needed to be refined. The document, in common
10 with most documents drafted at that point in time, was drafted
11 probably more hastily than people would have liked, and so
12 there was both a need to reflect ongoing discussions, but also
13 to tidy up, so to speak, some aspects of the APA, which perhaps
14 we all preferred to express more accurately.

15 Q. Did the clarification letter preserve what you have
16 described as the basic structure of the deal, which is that all
17 of the assets of Lehman used primarily in the acquired business
18 would be acquired by Barclays unless they were specifically
19 excluded?

20 A. Certainly the clarification letter didn't change the deal
21 at all in my view, certainly not in that respect. It did
22 change certain details of the transaction and tried its best to
23 make those more clear than they had been earlier in the week.

24 Q. And two of those, I don't mean to suggest that this is in
25 any way an exhaustive list, but two of those were to

1 specifically identify clearance box assets and the 15(c)(3)
2 assets as purchased assets that Barclays was acquiring,
3 correct?

4 A. That's correct.

5 Q. Incidentally, there was some examination with respect to
6 the term book value, as that term is used in the APA. Do you
7 recall that generally from Movant's examination of you?

8 A. I do.

9 Q. And in the clarification letter, did the clarification
10 letter strike out all of the references to book value from the
11 APA?

12 A. I believe so, yes.

13 Q. Now, we mentioned earlier the subject of REPO collateral.
14 Was it Barclays' understanding that it was going to acquire the
15 entire so-called REPO collateral as part of this transaction?

16 A. Yes.

17 Q. And according to your understanding, was that so specified
18 in the clarification letter?

19 A. I believe so, yes.

20 Q. Now, even if the REPO transaction, and by REPO
21 transaction, I mean when Barclay stepped into the shoes of the
22 Fed for the REPO; do you understand that?

23 A. I do.

24 Q. If that had not happened, and the transaction had simply
25 closed with the Fed continuing to be the REPO financier for

1 Lehman Brothers, would Barclays still have acquired the REPO
2 collateral?

3 A. I think yes, we would have, if there'd been no other
4 changes to the deal, we would've taken those assets because
5 again, by definition, they were assets that had been used by
6 Lehman Brothers in the course of its business. I think it
7 would've been somewhat unlikely that the Fed would've allowed
8 us to take those securities without also taking on some
9 liability for its own exposure. But I think by definition
10 again, the securities are used in Lehman's business, they
11 couldn't have come from anywhere else, and I don't believe they
12 did come from anywhere else.

13 Q. And to the extent that those assets in the REPO were not
14 specifically identified as excluded assets, Barclays would've
15 acquired them, whether or not it took over the Fed REPO or not,
16 correct?

17 A. Correct.

18 Q. To the extent that they were excluded assets, Barclays
19 would not have acquired them, correct?

20 A. Again, correct.

21 Q. And I don't know whether this goes beyond what you know
22 about the REPO or not, but I'll ask the question.

23 Do you know whether the REPO collateral did, in fact,
24 include some excluded assets?

25 A. That's my belief. You asked me a question earlier about

1 the enhanced risk in the transaction at the time we took on the
2 REPO. One of the things that happened during the operation or
3 during the execution, should I say, of the REPO transaction,
4 was that substantial amounts of securities that had previously
5 been collateral placed with the Fed, ended up elsewhere in the
6 market and was not delivered to Barclays.

7 I believe also along the way, there were assets delivered
8 to Barclays that we had previously identified as being of a
9 type and of a nature that we wished to exclude.

10 Q. And did that mean that when Barclays took over all of the
11 REPO assets, including some previously specifically excluded
12 assets that Barclay had not wished to acquire, that that also,
13 in addition to some of the other things we've mentioned,
14 increased Barclays' risk?

15 A. I think it increased the risk and subsequently decreased
16 the value.

17 Q. Now, let me turn specifically to the 15(c)(3) assets. In
18 that connection, I'm going to ask you to look at the
19 clarification letter, which I think is in one of the volumes
20 that you have, and I can put it up on the screen in any event.
21 And this is Barclays Exhibit 5, and it is Movant's Exhibit -- I
22 guess we don't know.

23 MR. BOIES: Do you know what Movant's Exhibit No. is?

24 MR. GAFFEY: Three.

25 MR. BOIES: Movant's Exhibit 3.

1 BY MR. BOIES:

2 Q. And let me direct your attention to page four of this
3 where it talks about 15(c)(3). And that is where it says,
4 "transfer of customer accounts," paragraph eight. Do you see
5 that?

6 A. I do.

7 Q. And it says that "All customer accounts of LBI, other than
8 customers who are affiliates of LBI, shall be transferred to
9 purchaser." Do you see that?

10 A. Yes.

11 Q. And it then goes on to say "In connection therewith,
12 purchaser shall receive (i) For the account of the customer,
13 any and all property of any customer, including any held by or
14 on behalf of LBI to secure the obligations of any customer
15 whose accounts are being transferred to purchaser as part of
16 the business." Do you see that?

17 A. Yes.

18 Q. And then it goes on to say, "and (ii) To the extent
19 permitted by applicable law, and as soon as practicable after
20 the closing, 769 million of securities, as held by or on behalf
21 of LBI on the date hereof, pursuant to Rule 15(c)(3)(3) of the
22 Securities Exchange Act of 1934, as amended, or securities of
23 substantially the same nature and value." Do you see that?

24 A. Yes.

25 Q. And as you understand it, what was the purpose of adding

1 the words "or securities of substantially the same nature and
2 value"?

3 A. The purpose was to ensure that Barclays received 769
4 million dollars of securities.

5 Q. Did anyone from Lehman, any representative of Lehman ever
6 suggest that that language, the language that says "securities
7 of substantially the same nature and value" had any purpose
8 other than to guarantee that you would get the 769 million
9 dollars from one source or another?

10 A. There was never any suggestion that it was for any other
11 reason, not at the time, nor am I ever aware -- nor am I aware
12 of any suggestions subsequently from anybody at Lehman Brothers
13 that was involved in the transaction.

14 Q. Let me now ask you to focus specifically on the clearance
15 box assets. Now, you have said that the clearance box assets
16 were unencumbered assets that were used in connection with
17 LBI's business, correct?

18 A. That's correct.

19 Q. And your view was that they were therefore purchased
20 assets, both under the original APA and under the clarification
21 letter, correct?

22 A. That's correct. I think it was Barclays' view, and I
23 believe it was Lehman Brothers' view at the time, too.

24 Q. Now, let me ask you to look again at Movant's Exhibit 3
25 and Barclays Exhibit 5, the clarification letter. And I want

1 you to look at section 1(a)(ii) of paragraph B. It's at the
2 bottom of the first page.

3 And this is a listing of specific purchased assets,
4 correct?

5 A. Some of them, yes.

6 Q. Of some of them, yes. And subpart B reads, "Such
7 securities and other assets held in LBI's 'clearance boxes' as
8 of the time of the closing, which at the close of business on
9 September 21, 2008 were specified on Schedule B, previously
10 delivered by seller and accepted by purchaser (provided however
11 that purchaser in its discretion may elect within 60 days after
12 the closing to return any such securities to LBI); provided
13 that no securities owned by LBHI or any subsidiary of LBHI,
14 other than LBI and other than as specified in this agreement or
15 clause three below." Do you see that?

16 A. Yes.

17 Q. And does that indicate that -- well, let me ask you. From
18 Barclay' standpoint, what was your understanding of the purpose
19 and effect of that provision?

20 A. It recorded the agreement reached between Barclays and
21 Lehman that Lehman would convey all of the unencumbered assets
22 in what were described as the clearance boxes, as purchased
23 assets within the APA.

24 Q. And as you understand it, at the time that this was being
25 negotiated and up through closing, did anyone from Lehman, any

1 representative of Lehman, ever suggest that Barclays was not
2 entitled to all of the assets, of whatever kind or nature that
3 were held in these clearance boxes?

4 A. Nobody at Lehman nor any of its many advisors suggested
5 anything of that sort.

6 Q. While we're on this page, item C listed here as one of the
7 non-exclusive listed purchased assets is exchange traded
8 derivatives and any property that may be held to secure
9 obligations under such derivatives. Do you see that?

10 A. Yes.

11 Q. And as you understood it, representing Barclays at the
12 time, what did this refer to?

13 A. I think the purpose of this provision was first of all to
14 make absolutely plain the agreement with respect to the
15 exchange traded derivatives, but also to make plain that any
16 type of property that was held, with respect to that business
17 were also -- was also part of the purchased assets and would be
18 conveyed; and the term "any property" I think was very plainly
19 intended and understood by the parties to be any property of
20 any type.

21 Q. Now, you testified earlier this morning that under the
22 circumstances here, it was inconceivable to you that Barclays
23 would've required these exchange traded derivatives and other
24 Lehman positions without also acquiring the collateral or
25 margin held to secure those obligations. Do you recall that?

1 A. Yes.

2 Q. And is the specific language here where it says that
3 Barclays is acquiring any property that may be held to secure
4 obligations under such derivatives an example of that?

5 A. Well, it wasn't just an example, but I think it's also the
6 -- it also includes in all of the margin or collateral, that
7 was held in that exchange traded derivatives business.

8 Q. Now, there was a suggestion by the Counsel for the trustee
9 that the obligation to deliver margin and collateral did not
10 include the obligation to deliver cash margin and collateral.
11 Do you recall that?

12 A. Yes.

13 Q. In that connection, I'd like you to look at tab eight in
14 the binder that I handed out. This is Exhibit 231, and at the
15 beginning, there is a particular page that we have marked as
16 Exhibit 231-A. And let me begin with Exhibit 231-A if I could.

17 This is the September 19th, 2008 agreement that was signed
18 by Barclays and by the trustee, correct, sir?

19 A. That is correct.

20 Q. And this execution copy has the signature of the trustee
21 and the trustee's lawyer, correct?

22 A. That's correct.

23 Q. And it begins by saying that "Effective as of the close of
24 business on September 19th, 2008, it is expected that Lehman
25 Brothers and Barclays Capital will complete the transfer of

1 certain business assets and liabilities from LBI to Barclays."

2 Do you see that?

3 A. Yes.

4 Q. And it then goes on to say "In connection with such
5 transfer, LBI has assigned to Barclay all rights in securities,
6 cash, and other property, which is defined as collateral,
7 pledged by LBI to the Options Clearing Corporation, OCC, and
8 held for OCC's benefit at JP Morgan Chase." Do you see that?

9 A. Yes.

10 Q. Now, are the securities, cash, and other property, the
11 collateral, pledged by LBI to the Options Clearing Corporation,
12 an example of what we were just talking about a few moments
13 ago?

14 A. Yes. The OCC was obviously one of the major participants
15 in the exchange traded derivatives business. It is one of the
16 major participants. It was interested in all of the collateral
17 and margin held by, in association with LBI's business, and
18 clearly wanted to ensure that it fully understood what would
19 happen to that margin in the event of the consummation of the
20 transaction between LBI and Barclays.

21 Q. The next sentence says "Barclays has assumed all the
22 rights and obligations of LBI in respect of said collateral,
23 and LBI has consented to set assignment and assumption." Do
24 you see that, sir?

25 A. Yes.

1 Q. And was that your understanding at the time?

2 A. Absolutely, yes.

3 Q. And it then says "Therefore, LBI hereby authorizes and
4 directs JP Morgan Chase to transfer on its books, as of the
5 close of business on Friday, September 19th, 2008, the
6 collateral pledged to OCC to the account or accounts of
7 Barclays Capital, and to reflect on the records of JP Morgan
8 Chase that such collateral is pledged to OCC by Barclays
9 Capital." Do you see that, sir?

10 A. I do see it.

11 Q. And collateral is specifically defined here as including
12 cash, correct, sir?

13 A. That's correct.

14 Q. And then it is signed by the trustee, correct?

15 A. Yes.

16 Q. And I'm going to ask you to look at a document that you
17 may or may not have seen before. This is behind tab ten. It
18 is BCI Exhibit 233. And this is a communication from James
19 McDaniel at Sidley Austin, and do you know who Mr. McDaniel and
20 Sidley Austin represented in this?

21 A. I believe they represented the OCC.

22 Q. Represented the OCC?

23 A. I believe so, yes.

24 Q. And this goes to Lehman and representatives of the trustee
25 and a number of other people. Do you see that?

1 A. Yes. Including at least one representative from Weil
2 Gotschal.

3 Q. And at the bottom it says, "In addition, OCC is holding
4 nearly one billion in cash for the accounts of LBI. It is
5 important that the disposition of these assets is understood
6 and agreed to among all parties, and that the documentation
7 addresses it in a consistent way." Do you see that?

8 A. Yes.

9 Q. And was that your understanding at the time, that that was
10 the position of the OCC?

11 A. It was certainly Barclays' understanding, because as I
12 said earlier, it didn't become clear until some time during the
13 course of the weekend that there was cash being held at the
14 OCC, or indeed at other clearing organizations relevant to the
15 exchange traded derivatives business. But I do recall that
16 during -- at some point during the weekend, the fact that there
17 was cash there within the totality of the margin was the
18 subject of, at a minimum, several e-mails I think going between
19 some of the parties that are also addressed on this e-mail.

20 So it was the subject of active consideration at the time.

21 Q. Now, insofar as you are aware, did you or anyone from
22 Barclays actually get a copy of this particular communication?

23 A. I couldn't tell you specifically now whether somebody at
24 Barclays actually received it. I do know that representatives
25 of Barclays received it, and it's my belief that

1 representatives of Barclays, in particular to Cleary Gottlieb
2 engaged in this discussion. I don't know whether that was in
3 person, by phone, or further by e-mail, but I do recall it was
4 an active consideration of the issues, as I say.

5 Q. Now, insofar as you are aware, did any of the recipients
6 of this e-mail, the trustee, the representatives of LBHI, their
7 lawyers, or any of the other representatives of the Movants
8 that got a copy of this, did any of them feel that it was
9 necessary or desirable or appropriate to go to court and say,
10 you know, they're transferring some cash as part of the
11 collateral for exchange traded derivatives? Did that happen,
12 sir?

13 MR. GAFFEY: Objection, Your Honor. Goes to his state
14 of mind.

15 THE COURT: I sustain the objection because the
16 question was did any of these representatives feel that it was
17 necessary to go to court; and I think even Mr. Boies would
18 sustain that objection.

19 MR. BOIES: I would, Your Honor. I would, Your Honor,
20 and I apologize for the awkward phrase.

21 THE COURT: Why don't you rephrase.

22 BY MR. BOIES:

23 Q. According to your knowledge and recollection, sir, did any
24 of the representatives, any of the many representatives of the
25 Movants, who received this e-mail, after receiving it, go into

1 court or notify the Court, or communicate to the Court in any
2 way, that the Court needed to be aware that there was cash
3 being transferred to Barclays as part of these margin and
4 collateral accounts?

5 A. No, none of them did.

6 Q. Let me ask you to go to the next tab, which is BCI Exhibit
7 262. And this is another communication to various
8 representatives of the Movants from Mr. McDaniel of Sidney
9 Austin representing the OCC. Do you see that?

10 A. Yes.

11 Q. And this is dated Sunday, September 21, 2008, at 4:03
12 p.m., correct?

13 A. Correct.

14 Q. And paragraph two says, "Having heard nothing further from
15 you with respect to cash held by OCC, in respect of the LBI
16 accounts, and in accordance with the terms of the transfer and
17 purchase agreement, all such cash in the accounts will be
18 transferred to Barclays assuming that the transaction closes
19 this evening." Do you see that, sir?

20 A. I do.

21 Q. Now, according to your knowledge and recollection, did any
22 of the representatives of the Movants that received this go
23 into court, or communicate with the Court in any way, saying to
24 the Court, you ought to be aware that OCC is going to transfer
25 cash from LBI to Barclay. Did that ever happen, sir, as far as

1 you know?

2 A. No, it didn't. Might I add, at the time, nobody, as far
3 as I'm aware, at either Lehman Brothers or any of its advisors
4 suggested at any point that there was not to be transferred
5 cash as part of the margin to be transferred, not just by OCC
6 but by anybody else.

7 Q. Now, at some point prior to closing, there was an issue
8 raised about the DTCC's wind down exposure, correct?

9 A. That's correct, yes. I believe it was first raised
10 earlier in the week. As far as I can remember, it was probably
11 first raised by DTCC with Barclays at least on the Thursday of
12 that week, of the buy week.

13 Q. And just to be clear, the DTCC was where the clearance box
14 assets were, or at least some of them, correct?

15 A. I'm pretty sure that some of them were there. Whether
16 absolutely all were there, the bulk certainly.

17 Q. There was certainly a substantial amount of Lehman's
18 clearance box assets that were at the DTCC, correct?

19 A. Yes. Easily the vast proportion.

20 Q. And did Barclays and DTCC reach an agreement as to some
21 protection that Barclays would give the DTCC to cover certain
22 clearing obligations in Lehman accounts?

23 A. Yes. The agreement ultimately was that the 250 million of
24 cash that Barclays was to convey in the deal to Lehman Brothers
25 would be held as unlimited indemnity for DTCC.

1 Q. And was that a resolution memorialized in a written
2 agreement with the DTCC?

3 A. Yes, it was.

4 Q. And let me put Barclays Exhibit 6 up on the screen. This
5 is a September 22, 2008 DTCC letter. And I would ask you
6 whether this is the letter that memorialized Barclays'
7 agreement with the DTCC?

8 A. Yes.

9 Q. And does this letter accurately reflect the terms that
10 were reached with the DTCC and Barclays on Sunday night,
11 September 21st?

12 A. Yes.

13 Q. Was the clarification letter written to include provisions
14 to take into account the provisions of this DTCC letter that
15 has been marked as Barclays Exhibit 6?

16 A. I believe it was, yes.

17 Q. And did the clarification, in fact, nullify, if that's the
18 right word, those provisions of the first amendments to the APA
19 that it provided a guarantee to the DTCC?

20 MR. GAFFEY: Objection, Your Honor. The document
21 speaks for itself. He's being asked to characterize what the
22 document --

23 THE COURT: I think that's an --

24 MR. GAFFEY: -- encompasses.

25 THE COURT: -- objection that's well taken and even

1 the question's, use of the term nullify, I think is one that
2 calls for a conclusion as to which documents are still
3 operative; and under the circumstances, I think either the
4 question should be rephrased or withdrawn.

5 MR. BOIES: I will, Your Honor.

6 BY MR. BOIES:

7 Q. As you recall, was there a first amendment to the APA,
8 sir?

9 A. Yes, there was.

10 Q. And as you understood it, on behalf of Barclays at the
11 time, did that first amendment provide a guarantee to the DTCC
12 from Barclays?

13 A. It did, yes.

14 Q. As you understood it, representing Barclays, did the
15 clarification letter affect that guarantee in the first
16 amendment?

17 A. Yes. The coverage in the first amendment agreement was
18 provided in the form of some residential mortgage securities,
19 which it turned out were no longer available for that purpose.
20 In addition, after discussions between Barclays and DTCC, DTCC
21 concluded that the 250 million dollar cash limits of indemnity
22 that I referred to earlier, was sufficient for its purposes,
23 and that was reflected in the -- that change was reflected in
24 the clarification letter.

25 Q. Now, was it Barclays' understanding at the time that this

1 letter that has been marked as BCI Exhibit 6 affected in any
2 way Barclays' entitlement to LBI's clearance box assets?

3 A. Certainly not.

4 Q. Was Barclays ever asked by Lehman Brothers or the DTCC or
5 anyone else as part of the negotiations of the Barclays Exhibit
6 6 agreement, to relinquish any right to any of the clearance
7 box assets?

8 A. Nobody ever made any suggestion of that sort to Barclays,
9 nor indeed if such a suggestion had been made would we have
10 agreed to it. I think it's worth noting that the clearance box
11 assets were only raised for the particular purpose of
12 identifying the value that we spoke about earlier, in
13 circumstances in which Barclays was greatly concerned about the
14 amount of that value that could be delivered. For us to give
15 up that additionally identified value within -- at any point in
16 time would seem to me to be nonsensical, but equally for that
17 to have purportedly happened within hours of that agreement
18 having been reached, it just didn't happen. And as I say, if
19 it would've been suggested, Barclays clearly would have
20 rejected it.

21 Q. Did anyone ever suggest prior to closing that the DTCC
22 letter agreement with Barclays that is Barclays Exhibit 6,
23 reduced in any way Barclays' rights to the Lehman clearance box
24 assets?

25 A. No.

1 Q. Does the DTCC and Barclays letter agreement that is
2 Barclays Exhibit 6 address different subject matters than the
3 clarification letter?

4 A. Very much so, yes.

5 Q. Could you explain that?

6 A. The clarification letter relates to particular assets that
7 were subject -- that were the subject of discussion between
8 Lehman Brothers and Barclays; and obviously given what I said
9 earlier, were part of the sale transaction.

10 The discussions with DTCC were completely different, in
11 the sense that DTCC was concerned about other outstanding
12 clearance and settlement obligations of LBI. It's perhaps
13 worth noting that the whole of this transaction was being
14 negotiated while there were other outstanding clearing and
15 settlement obligations of Lehman Brothers from days prior. It
16 was an active broker dealer during the course of that week, in
17 addition to prior weeks, and there were in DTCC's mind, and I
18 think as we all would've expected, potentially significant
19 outstanding clearance and settlement obligations that needed to
20 go through the accounts of Lehman Brothers. That was
21 legitimately a concern of DTCC, and DTCC was interested to
22 learn from Barclays what Barclays' position would be with
23 respect to those clearance and settlement obligations.

24 They were -- the discussions with DTCC, in my
25 recollection, took place separately from any other discussions

1 with respect to the transaction; and I think quite
2 appropriately so. It was a debate between DTCC and Barclays
3 about what Barclays might give coverage to DTCC for. That was
4 ultimately the agreement with respect to that was ultimately
5 recorded here.

6 Barclays separately had discussions about assets which
7 were within some accounts held at DTCC, but certainly Barclays
8 was intent on not taking on any further liability for those
9 other accounts, or for anything else in those accounts.

10 Q. Now, you drew a distinction between the DTCC accounts and
11 the assets in those accounts, correct?

12 A. Yes.

13 Q. And under the clarification letter, what happened to the
14 assets held in the clearance boxes for Lehman Brothers at the
15 DTCC?

16 A. I think both under the APA as originally written, and by
17 virtue of the clarification letter, those assets were to be
18 conveyed. Those securities and other assets were to be
19 conveyed to Barclays from the accounts.

20 Q. And does that say anything about what happens to the
21 accounts themselves?

22 A. Absolutely not. They stay where they were.

23 Q. Now, is there anything unusual in an account owner
24 transferring assets from its account to another person without
25 also transferring the account itself?

1 A. Certainly not from my perspective.

2 Q. Now, we've talked about the DTCC accounts, and the DTCC
3 clearance box assets, and the OCC assets, and I want to try to
4 keep those clear.

5 You have just distinguished between the DTCC accounts and
6 the DTCC assets that were held, correct?

7 A. Yes.

8 Q. Now I'd like you to focus on the difference between the
9 DTCC accounts and the OCC accounts. You said that Barclays did
10 not acquire the DTCC accounts, correct?

11 A. That's correct.

12 Q. Did Barclays acquire the OCC accounts?

13 A. Yes.

14 Q. What was the purpose of acquiring the OCC accounts, but
15 not the DTCC accounts?

16 A. The OCC accounts were part of the exchange traded
17 derivatives business, I believe, and the intention from day one
18 of the discussions was to continue that business. By
19 definition, we had agreed to acquire it, and therefore, wished
20 to continue to pursue that business. The OCC accounts were a
21 necessary part of that, not just from our point of view, but
22 also from OCC's point of view. I believe that OCC would not
23 have agreed to the assignment of all of those rights and
24 obligations with respect to those accounts if Barclays had not
25 agreed to do that.

1 The DTCC accounts, by contrast, were accounts primarily
2 related to the securities business of Lehman Brothers as a
3 broker dealer, which business was not going to continue. By
4 definition, those accounts were going to be wound down. They
5 did not have margin associated with them. They were two very
6 different scenarios. On the one hand, the business was going
7 to wind down, and we were not going to pursue it, and had not
8 agreed to take on that business, whereas, the OTC -- sorry, the
9 exchange traded derivatives businesses, we had agreed to take
10 on and intended to pursue those businesses.

11 Q. Now, focusing again on the DTCC Barclays letter agreement
12 of September 22, 2008, that is Barclays Exhibit 6, did that
13 letter agreement benefit Lehman in any way?

14 MR. GAFFEY: Objection, Your Honor.

15 THE COURT: Well, it's sustained to the extent that
16 you're asking this witness to comment as to what benefited
17 Lehman. He hardly seems to be in a position to give that
18 opinion.

19 Q. As a representative of Barclays, did you have an
20 understanding as to whether or not the DTCC letter agreement of
21 September 22, 2008 with Barclays would benefit Lehman Brothers?

22 MR. GAFFEY: Objection, Your Honor. I don't think
23 that cures it at this time. He can't have knowledge -- well,
24 objection, Your Honor, I think it's the same objection as the
25 last question.

1 THE COURT: I think it is the same objection, although
2 if you lay a foundation that he actually has a basis to answer
3 the question, maybe you can get at it that way, if you really
4 need to get at it at all.

5 MR. BOIES: I don't think it's critical that I --

6 THE COURT: Well, you can proceed any way you wish.

7 MR. BOIES: -- get at --

8 THE COURT: It's just I think there's a foundation
9 problem in getting this witness to the point that he has any
10 knowledge whatsoever as to what might benefit Lehman in this
11 aspect of the transaction.

12 MR. BOIES: Let me try one more question, and if it
13 doesn't work, I'll move on.

14 BY MR. BOIES:

15 Q. I'm only asking for your understanding, Mr. Hughes. At
16 the time that the DTCC September 22 letter with Barclays was
17 executed, you were aware of that letter, correct?

18 A. I was.

19 Q. And at that time, as a representative of Barclays, did you
20 have an understanding as to whether or not you believed that
21 that letter was going to benefit Lehman Brothers or not?

22 A. I think the answer to that is yes, for a couple of
23 reasons. The provenance of the discussion with DTCC, with
24 DTCC's concern with respect to cash and securities flowing
25 through DTCC accounts on Monday morning, the 22nd, without that

1 concern none of this would have existed.

2 It was part of DTCC's position on the Thursday, the 18th,
3 going through to the conclusion of this agreement that if we
4 did not achieve an agreement, that it would not allow cash and
5 securities to flow through those accounts. I think it was a
6 crucial agreement to reach, therefore, in order that the
7 transaction could take effect, and in addition, that other
8 outstanding clearance and settlement obligations of Lehman
9 Brothers could also be met.

10 The need, for example, and just one example to have those
11 accounts open for business on Monday morning to allow the
12 securities and cash to flow to Barclays, allowed Lehman to
13 consummate the transaction. If those accounts had not been
14 opened, I don't think Lehman Brothers would've been able to
15 perform the transaction.

16 Q. I have just two more questions. I'd like to direct your
17 attention to some testimony that Mr. McDade gave at pages 97
18 and 98 of the trial transcript. And in particular, I want to
19 start at line 18.

20 MR. BOIES: If we can put it up on the screen. If
21 not, I will do it the old-fashioned way.

22 Q. I will read it to you, sir. Beginning --

23 THE COURT: It's on the screen.

24 MR. BOIES: It's on the screen.

25 Q. At line 18, on page 97 --

1 MR. BOIES: Excuse me, Your Honor, can I have just a
2 moment?

3 THE COURT: Sure.

4 MR. BOIES: Your Honor, this is going to take me just
5 a minute. I apologize --

6 THE COURT: That's fine.

7 MR. BOIES: This pagination.

8 THE COURT: While we're on this unanticipated pause, I
9 note that I'm not receiving my Live Note through my computer.
10 I don't know if anybody else is, and I just wanted to alert the
11 reporter that nothing's functioning at the moment --

12 THE REPORTER: I'm going to make sure it's --

13 THE COURT: -- at least as far as I can tell.

14 MR. GAFFEY: One of our screens, but not mine, Your
15 Honor, seems to be receiving.

16 THE COURT: All right.

17 MR. BOIES: Your Honor, I am going to do this the old-
18 fashioned way. I'm just going to read a question and answer
19 and ask him whether he agrees with it.

20 BY MR. BOIES:

21 **Q. And follow along with me, Mr. Hughes, as best you can**
22 **without the advantage of the new technology that puts it on the**
23 **screen. I began by asking Mr. McDade --**

24 THE COURT: I'm sorry, Mr. Boies, can I just ask you
25 again for the page and line reference.

1 MR. BOIES: I have this as 97 at line 18, and you can
2 read along with me if you want.

3 MR. GAFFEY: If you don't mind.

4 MR. BOIES: Not a bit.

5 BY MR. BOIES:

6 Q. "Q. I just want to emphasize that. When you talked about
7 assets and liabilities being or ending up being in rough
8 balance, you were talking about the assets and liabilities and
9 value from Lehman's perspective, not from Barclays'
10 perspective, correct?

11 "A. That's correct. I'd have no ability to understand how
12 Barclays would value that.

13 "Q. And there were a number of assets that might have
14 little or no value to Lehman as a non-operating company that
15 might have substantial value to Barclays as an operating
16 company, correct?

17 "A. Yes, I would agree.

18 "Q. And if that difference resulted in a first day gain
19 for Barclays, that was in no way inconsistent with your
20 understanding of the deal, correct?

21 "A. Yes."

22 Do you agree with Mr. McDade's statement of his
23 understanding of the deal?

24 A. I do.

25 MR. BOIES: No more questions, Your Honor.

1 THE COURT: Is there redirect?

2 MR. GAFFEY: Yes, there is, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. GAFFEY:

5 Q. Mr. Hughes, Barclays' Counsel asked you about the fact
6 that no valuations were done for all of the assets -- that
7 valuations were not done for all of the assets, and I think you
8 said they were only done for two of the categories of assets;
9 is that right?

10 A. I think I said there were estimates given for, what I
11 thought were two, possibly three, but I think two.

12 Q. All right. Do you recall, sir, that we've discussed and
13 you've seen in this case that there was a point at the sale
14 procedures hearing before Judge Peck on the 17th of September,
15 2008, when the Court inquired as to the -- how to assess the
16 overall value of the transaction?

17 A. I think I recall reading that in the transcript at some
18 point, yes.

19 Q. Were your -- were Barclays' representatives at the
20 hearings under any type of instruction to ensure that the Court
21 knew that in addition to whatever description Mr. Miller gave
22 of the overall value that there would be value of these other
23 categories, other than the two for which -- to which numbers
24 had been applied?

25 A. I couldn't say that there was a specific instruction to

1 that effect, but I do believe that the Barclays representatives
2 knew that to the extent that a disclosure was relevant to the
3 Court or to the extent that something misleading had being
4 mentioned to the Court that they would've done something about
5 that.

6 Q. And you have no recollection of them adding to Mr.
7 Miller's response to the Court, correct?

8 A. That's correct. I believe that they were satisfied that
9 Mr. Miller and Mr. Miller's representations and the other
10 representations to the Court were appropriate in the
11 circumstances.

12 Q. Now, you also spoke a bit before to Barclays' counsel
13 about -- well, we established on Friday, sir, that you were
14 very involved in this transaction, correct?

15 A. That's correct.

16 Q. And you were closely tracking everything that you could
17 with regard to the transaction during the week of September
18 15th, correct?

19 A. I know that I said that I did my best to track as much as
20 I could. It's important to note that there was an enormous
21 number of different things happening during the course of that
22 week, and I don't think any single person could've tracked
23 everything, no matter how hard one tried.

24 Q. And the analyst call that Mr. Boies showed you, took you
25 through a little bit and told you it was on the website, you

1 didn't see that analyst call. You never read the transcript of
2 that analyst call until your deposition was taken in this
3 action; isn't that right, sir?

4 A. I can't recall whether that was the very first time that I
5 saw it, but I certainly didn't see it at the relevant time.

6 Q. It is your best recollection that it's probable that you
7 saw it in preparing for your deposition, right?

8 A. It's probable.

9 Q. And it was your practice as the general counsel at
10 Barclays during the time of this transaction to keep track of
11 those things that were material or important to the
12 transaction, yes?

13 A. Again, I tried to do that. I don't think it was feasible
14 for me to track all of those aspects that were material, but I
15 did have external advisers and internal colleagues who were
16 also a part of the team trying to do all of those things.

17 Q. Now, Mr. Hughes, Mr. Boies asked you about -- whether the
18 clarification letter was the means by which the definition of -
19 - whether the term book value was stricken from the asset
20 purchase agreement through the clarification letter. Do you
21 recall that?

22 A. I recall the question.

23 Q. And do you recall that your answer was yes, that that's
24 where the book value definition was changed?

25 A. I think that I said that it came out, it certainly came

1 out in the clarification letter. Whether it was referred to
2 elsewhere prior to that, I can't now recall.

3 Q. And you would agree with me, sir, would you not, that
4 changing the definition of purchased assets in an asset
5 purchase agreement is a pretty important thing?

6 A. I think changes to the definition of purchased assets to
7 the extent that they were needed at the time were made in the
8 clarification letter. So clearly the parties felt there were
9 aspects of it that were meaningful enough to include in the
10 clarification letter, yeah.

11 Q. And it was meaningful enough to strike the definition of
12 book value from the asset purchase agreement in the
13 clarification letter, sir, but it was not meaningful enough to
14 file that clarification letter with the Court, before the
15 closing?

16 A. I don't have any particular recollection at the time of
17 the discussion about book value. As I think I said to you on
18 Friday, that specific phrase, to the extent anybody at Barclays
19 did consider it, was not something that we spent a lot of time
20 thinking about. Again as I said, we were considering
21 appropriate market values for the assets that were the subject
22 of discussion.

23 Q. But the elimination of the book value definition was
24 meaningful enough to include in the clarification letter,
25 correct?

1 A. I can't say whether at the time people felt that it was
2 meaningful enough. I can tell you that in fact it's not in the
3 clarification letter.

4 Q. Well, I'm asking about your answer a moment ago, sir. Did
5 you not say that it was considered sufficiently meaningful to
6 include in the clarification letter, the elimination of the
7 book value term?

8 MR. BOIES: Objection, Your Honor.

9 THE COURT: What's the objection?

10 MR. BOIES: He didn't say that.

11 THE COURT: Well, if he didn't say that, then it's a
12 fair objection to the question. I frankly don't remember in a
13 nuanced way exactly what he did say in reference to what's
14 being restated. So why don't you just state a different
15 question.

16 MR. GAFFEY: Let me try it a different way. Thank
17 you, Your Honor.

18 BY MR. GAFFEY:

19 Q. Mr. Hughes, the elimination of the term book value was
20 sufficiently meaningful that it was removed by virtue of the
21 clarification letter from the asset purchase agreement,
22 correct?

23 A. Again, I don't know whether it was sufficiently
24 meaningful. As I recall, the phrase was used with reference
25 only to the long positions, and I believe possibly also the

1 short positions. The meaningful, if you wish to use that term,
2 the meaningful change was to make plain that the long positions
3 and the short positions were no longer a part of the APA, and
4 they had been replaced.

5 So to the extent that references to long positions and
6 short positions were going to be removed, then if I'm right and
7 that was the only reference to book value, it seems to me
8 likely that that reference would come out, too.

9 Q. Well, do you recall when the term book value was -- the
10 removal of book value from the APA was addressed in a draft to
11 the clarification letter?

12 A. I have no idea.

13 Q. Okay. Would you take a look at tab 53 in your binder?

14 A. The binder, the one that you gave me on Friday?

15 Q. Yes. It's the fat book there. And when you get to page
16 53, and again, I apologize, because the Bates numbers are cut
17 off on this, but if you would go to the first page, about
18 midway through the document where the blackline version begins,
19 Mr. Hughes, and let me know when you're there.

20 A. Should I be looking at M-53?

21 Q. It's the tenth page from the back, Mr. Hughes.

22 A. I think I'm there.

23 Q. Okay. And you're at the first page of the blackline --

24 A. Yes.

25 Q. -- where the date is September 21st, shown in blackline

1 form?

2 A. It's -- the date says September 21st, top left. On the
3 top right it says --

4 Q. Right.

5 A. -- September 20th.

6 Q. Okay. And if you would turn overleaf -- actually, take a
7 look starting at the first page of the blackline in Section
8 1(a)(ii), where it begins "plus the securities." Do you see
9 that? Are we in the same place?

10 A. Yes.

11 MR. GAFFEY: Actually, I'm going to ask to have it put
12 on the screen all of that subsection two which runs over to the
13 next page.

14 Q. All right. Now, you can see from the blackline, Mr.
15 Hughes, that in the prior version of the letter, the one that's
16 being marked up, the definition had said, and I'm reading under
17 the blackline, "It being understood that the long positions
18 referred to in Clause D of the purchased assets do not have a
19 book value of approximately 70 billion." Are you with me there
20 under the --

21 A. Yes.

22 Q. You see what was stricken from the prior draft?

23 A. I see it, yes.

24 Q. And above that, in the blackline is what was substituted
25 for it, and that's the reference -- those are the references to

1 the clearance box and -- yeah, that's the reference to the
2 clearance box assets, right?

3 A. In Roman two, yes.

4 Q. So you would agree with me, sir, that this appears to be
5 the draft where the term book value was removed from the asset
6 purchase agreement, correct?

7 A. I don't know whether this is the draft as you describe it.
8 I wasn't involved in these drafts necessarily. It may well be
9 that I saw them at the time, but I couldn't tell you when, or
10 by whom, or in which version of the letter.

11 Q. Okay. Well, let's take a look. It'd probably be best if
12 you'd keep your finger in this section, so we don't have to
13 count the pages again. But would you go to the first page of
14 the document, please, Mr. Hughes?

15 And, Mr. Hughes, at the very first page of the document,
16 you see -- which is an e-mail.

17 A. Yes.

18 Q. And you see that that e-mail is from Robert Messineo at
19 Weil to Victor Lewkow at Cleary Gottlieb, correct?

20 A. I see that.

21 Q. Mr. Lewkow is Barclays' counsel, correct?

22 A. One of them, yes.

23 Q. All right. And Mr. Messineo's note says, "Here is the
24 current version of the clarification letter, along with a copy
25 marked to show the changes from last night's version," correct?

1 A. I see that, yes.

2 Q. And you'll see that Mr. Messineo's e-mail is dated
3 Saturday, September 20th, 2008, 2:39 p.m. Do you see that?

4 A. I do.

5 Q. And do you understand that Mr. Messineo's -- well, given
6 the date, sir, you know that "the last night" Mr. Messineo's
7 referring to would be the night of the sale hearing, correct?

8 A. Yes.

9 Q. All right. So does this change not indicate to you, Mr.
10 Hughes, that the definition of book value came out after the
11 sale hearing concluded?

12 A. I don't know, because I don't know what the version is
13 that Mr. Messineo is referring to, apart from it says last
14 night, it doesn't say when last night. So I've no idea.

15 Q. We can't agree, sir, that this document circulated at 2:39
16 p.m. on September 20th is the one where the term "book value"
17 is stricken from the draft? Go back to where I said to keep
18 your finger in the document.

19 A. Well, I don't know whether it is the version as you
20 describe it. It's clear that book value comes out in this
21 version.

22 Q. And I think we're agreed too, sir, that the removal of the
23 term book value from the asset purchase agreement was not in
24 any way brought to the attention of the Court during the sale
25 hearing, correct?

1 A. I don't recall any specific reference to book value or its
2 removal from having read the transcript or spoken to anybody.

3 Q. And we're agreed, sir, that the clarification letter was
4 not filed with the Court until after the closing, correct?

5 A. I think that is correct, I think it was referred to.

6 MR. GAFFEY: I have nothing further, Your Honor.

7 THE COURT: All right.

8 MR. MAGUIRE: If it please the Court.

9 RECROSS-EXAMINATION

10 BY MR. MAGUIRE:

11 Q. Mr. Hughes, again, Bill Maguire for the SIPA Trustee. I'd
12 like to start with some testimony that you offered on the
13 subject of the Depository Trust Clearing Corporation or the
14 DTCC.

15 You testified it was separate, Barclays' negotiations with
16 the DTCC separately from Lehman, and that you thought was done
17 quite appropriately. Do you recall that testimony?

18 A. Yes.

19 Q. And you recall Mr. McDade's testimony where he testified
20 that Barclays had excluded Lehman from those negotiations with
21 DTCC?

22 A. I don't recall specifically whether Mr. McDade said they
23 were excluded or not. I do agree that Mr. McDade didn't
24 participate in those discussions.

25 Q. It was a fact, was it not, sir, that this issue with DTCC

1 was of enormous importance to the people who were trying to
2 close this transaction?

3 A. I think it was of enormous importance to all parties to
4 the transaction, yes.

5 Q. It would have been hugely problematic to close this
6 transaction if DTCC had not reached an agreement with Barclays;
7 isn't that right?

8 A. That is right.

9 Q. Now, the assets that were at the DTCC, the Lehman assets
10 that were at DTCC, the 1.9 billion dollars, Barclays was never
11 able to actually value or even establish that there was a value
12 to those assets; isn't that right?

13 A. I don't think we had the time then to establish whether
14 1.9 was a good number or not. I think subsequently it turned
15 out not to be a good number. They were worth appreciably less
16 than that.

17 Q. In fact at the time, despite having a due diligence team
18 at DTCC's office, Barclays was not even able to reach a
19 conclusion as to whether those assets might not, in fact, be
20 liabilities; isn't that correct?

21 A. I'm not sure what you mean by a due diligence team, nor do
22 I recall specifically who was present at DTCC at the time you
23 refer to.

24 Q. You do recall, however, that Barclays was unable to
25 conclude by the end of the day Sunday, on the weekend the

1 clarification letter was negotiated, by the end of that day
2 Sunday, Barclays was not able to conclude one way or another,
3 whether those assets at DTCC might not, in fact, be liabilities
4 if Barclays were to take them on?

5 A. I think Barclays concluded that first of all, there were
6 substantial risk and uncertainty with respect to the valuations
7 of those assets.

8 Secondly, that it could be -- it could make a reasonable
9 judgment about those assets at the time. And thirdly, that
10 there may well be some assets within the pool that could prove
11 not only to be worth less than represented, but possibly,
12 possibly represent potential liability to Barclays.

13 Q. In fact, sir, was the draft clarification letter, not
14 drafted so as to give Barclays an express contractual right to
15 put any of those assets back to Lehman, that it did not want?

16 A. Again, I don't know what happened in the drafts. I
17 believe that the ultimate agreement allowed -- gave Barclays
18 that opportunity if it wished to take it.

19 Q. Now, you understand that the whole point of the DTCC
20 negotiations was to come up with some mechanism that would
21 protect DTCC?

22 A. I think that the DTCC's initial concern with respect to
23 its potential liability was the reason why they asked -- why
24 they started the discussion with Barclays, yes.

25 Q. The whole point of the discussions was that if DTCC did

1 not feel that it was sufficiently protected then you would have
2 a huge problem closing this transaction.

3 A. That was what was suggested at the time, yes.

4 Q. Now, in your testimony to your counsel this morning, you
5 drew a distinction between accounts and assets in the accounts.
6 Do you recall that?

7 A. For that purpose, yes.

8 Q. You know that at the time DTCC had rights in the assets
9 that were in Lehman's accounts at the DTCC?

10 A. Which assets are you referring to?

11 Q. The Lehman assets at DTCC, the clearing box assets.

12 A. I don't know exactly what DTCC's rights with respects to
13 those unencumbered assets were. I'm not sure that its rights
14 were necessarily the same with respect to those assets, when
15 compared to rights with respect to other assets. I think
16 probably they were different.

17 Q. Well, what you're suggesting in your distinction between
18 the accounts and the assets is that the accounts with all of
19 the liabilities that DTCC was so concerned about would stay
20 behind, and that the assets, which were the only protection
21 that DTCC had, other than the 250 million, would go to
22 Barclays. That's the import of the distinction you're making;
23 is it not?

24 A. My understanding is that DTCC was concerned about the
25 entirety of the outstanding clearance and settlement

1 transactions in the DTCC system. My understanding also was
2 that the assets in the clearance boxes were unencumbered, and I
3 think therefore, the two were in Barclay's mind at the time,
4 distinct; and I think in practice, they have remained distinct.

5 The fact that DTCC, following my urging, did agree that a
6 rational assessment of its liabilities was no more than 250
7 million dollars, suggests to me that that's the best way to
8 establish what DTCC thinks or thought at the time was its
9 principal concern.

10 Q. You're suggesting that at your urging on Sunday night,
11 DTCC reconsidered its view and decided that it was no longer so
12 concerned about its exposure that it would accept a mere 250
13 million dollars? Is that what you just suggested, sir?

14 A. No. What I'm suggesting is that on Thursday evening, I
15 had a discussion with a representative of DTCC. At the
16 beginning of that discussion there was a request from DTCC for
17 Barclays to provide a blanket guarantee for potential clearance
18 and settlement obligations. I suggested to them, indeed I
19 urged quite urgently that they should consider a rational
20 number for that protection, that they had the relevant
21 information from which they could establish a potential net
22 liability to DTCC, which information was clearly not available
23 to Barclays.

24 I don't know what the thought patterns were from that
25 point until the signing of the DTCC letter, but I do know what

1 the DTCC letter ultimately says.

2 Q. You know that you offered DTCC 250 million dollars
3 Thursday night?

4 A. I don't recall specifically whether we offered 250. It's
5 possible that we offered that specific number. I don't recall.

6 Q. And you know that DTCC rejected that offer?

7 A. If that offer was made Thursday night, it probably -- it
8 may well have been rejected. I don't recall whether the
9 specifics were as you describe them.

10 Q. And when the parties appeared before the Court at the sale
11 hearing, DTCC was being provided with billions of dollars of
12 additional residential mortgage backed securities as collateral
13 in addition to the 250 million. You know that.

14 A. Again, I don't recall the specifics. My recollection is
15 that in the first amendment, the residential mortgages were to
16 be provided as a form of limited guarantee, which residential
17 mortgages were to be coming, in essence, from Lehman Brothers.
18 But that again was changed, as you've described. Certainly by
19 Sunday night, that had changed.

20 Q. By Sunday night, the residential mortgage securities were
21 no longer available for DTCC's protection.

22 A. That's correct. Lehman was no longer in a position to
23 deliver those assets to Barclays, and therefore, Barclays was
24 not in a position to use them to give any protection to
25 anybody.

1 Q. And you're not aware of any discussions with DTCC after
2 Friday night?

3 A. I was not personally involved, I think, in such
4 discussions, but I believe, though I can't be precise about the
5 timing of the discussions, that there were discussions among
6 DTCC and representatives of Barclays during -- at some point
7 between in Thursday, Friday, and through to the close on
8 Monday.

9 Q. You were certainly in no position to tell us if we were to
10 ask DTCC if they suddenly became sanguine about their exposure
11 Sunday night, you are in no position to tell us what answer
12 they will give us.

13 A. No, but as I say, I am in a position to tell you what the
14 beginning of the discussion was, and what the conclusion of the
15 discussion was.

16 Q. Now, the conclusion of the discussion ultimately was that
17 Barclays entered into the agreement with the Depository Trust
18 Clearing Corporation, right?

19 A. Correct.

20 Q. And it obviously would have been of great importance for
21 the DTCC in entering into that agreement, to know about and to
22 understand the distinction that you have made today between the
23 accounts at DTCC and the assets, the contents of those
24 accounts. That would be of extraordinary importance to DTCC,
25 where they are looking to the contents of those accounts for

1 their protection. You would agree it would be important for
2 them to know that distinction?

3 MR. BOIES: Objection, Your Honor.

4 THE COURT: Sustained. For the very same reasons I
5 sustained a similar objection that was made to one of Mr.
6 Boies' questions during direct.

7 Q. Did anyone at Barclays tell DTCC about the distinction
8 that you have drawn today between the accounts and the contents
9 of those accounts?

10 A. I didn't know whether it was a specific discussion of the
11 type that you mention, but I do know that there was never any
12 suggestion by anybody at the time that Barclays would either
13 not take the clearance box securities, or would give them up
14 for any reason whatsoever. The agreement, I think, is short
15 and very clear with DTCC. It's about the accounts and
16 liabilities to DTCC with respect to the clearance and
17 settlement obligations associated with those accounts. And
18 there was no need to discuss the clearance box securities,
19 certainly from Barclays' perspective, and I'm not aware as I
20 say, there was any suggestion from anybody, DTCC included, that
21 the clearance box securities were relevant to the consummation
22 of that discussion and agreement between Barclays and DTCC.

23 Q. Well, I was hoping to avoid this, but maybe we can put up
24 to the DTCC agreements.

25 THE COURT: Well, before we get there, Mr. Maguire,

1 you are over the witching hour that I had established during
2 our conference Friday afternoon, and I need to know how much
3 more time you expect to be, because if it's going to be a
4 while, I don't want to cut you off in any way, we're going to
5 have to come back at 2:30.

6 MR. MAGUIRE: I think it might be better if we come
7 back at 2:30, Your Honor.

8 THE COURT: That's an inconvenience for the witness,
9 I'm sorry about that, but when you say a while, how long are
10 you going to be?

11 MR. MAGUIRE: It's going a little more slowly than I'd
12 hoped, Your Honor. I'm guessing probably another half hour.

13 THE COURT: Well, under those circumstances, with
14 regrets that our schedule seems to be suffering a setback,
15 we'll resume at 2:30. We're adjourned till then.

16 (Recessed and reconvened.)

17 THE COURT: Be seated, please. Let's proceed.

18 MR. MAGUIRE: If it please the Court. Again, Bill
19 Maguire for the SIPA Trustee.

20 RECROSS-EXAMINATION, CONTINUED

21 BY MR. MAGUIRE:

22 Q. I believe, Mr. Hughes, before the lunch break, we were
23 looking at Movant's Trial Exhibit 449, which is the DTC (sic)
24 letter agreement that Barclays entered into with the Depository
25 Trust Clearing Corporation. Now, this is that document?

1 A. It appears to be, yes.

2 Q. The understanding here was that the sale would close some
3 time before the markets opened, right?

4 A. That was everybody's hope, yes.

5 Q. And that the DTCC, assuming an agreement was reached with
6 the DTCC, would then proceed to wind down the open trading
7 positions of Lehman, right?

8 A. I'm not privy to what the DTCC planned to do immediately
9 upon the opening of the markets on the Monday morning, but it
10 was my belief that both from its perspective and from Lehman's
11 perspective, there would be a wind down of the Lehman accounts.

12 Q. And you understood that that was expected to take some
13 time?

14 A. I'm not sure I considered it at the time, to be frank.

15 Q. Okay. Let's turn to the second page of this exhibit,
16 which deals with the winding down of accounts. Let's see if we
17 can blow up just the first sentence of that section.

18 You understand that this refers to the accounts of Lehman
19 at the Depository Trust Clearing Corporation?

20 A. I believe so, yes.

21 Q. And you'll see here that this agreement provides that
22 Barclays has indicated "and hereby agrees that all of the
23 accounts of Lehman maintained at the Clearing Agency's
24 subsidiaries, the accounts, constitute excluded assets within
25 the meaning of the APA." You see that, sir?

1 A. I do, yes.

2 Q. And you understand that APA here means Asset Purchase
3 Agreement?

4 A. Yes.

5 Q. And you understand that excluded assets under the APA are
6 those assets which were not purchased assets and did not go to
7 Barclays, but were instead excluded assets that stayed with the
8 estate?

9 A. Yes.

10 Q. And I believe it's your position this morning, sir, that
11 notwithstanding the fact that all of the accounts of Lehman at
12 the DTCC were excluded assets, it's nonetheless Barclays'
13 position that all of the assets, all of the securities in those
14 accounts, were nonetheless purchased assets that were going to
15 go to Barclays?

16 A. The assets that you were asking about earlier, namely the
17 clearance box assets, the answer is yes, and indeed any other -
18 - I think that's really what we were discussing this morning,
19 so yes.

20 Q. So the accounts were staying with DTCC with Lehman and all
21 of the securities in the accounts belonged at closing to
22 Barclays?

23 A. The clearance box securities, yeah.

24 Q. Right. Now, if you turn, sir, to the next paragraph of
25 the letter, the one that starts, "As part of this close-out

1 process," it says that "the Trustee hereby authorizes DTC (sic)
2 to accept and act upon instructions from NSCC to deliver
3 securities from the DTC LBI account to NSCC's account in order
4 to reduce or eliminate LBI's outstanding delivery obligations
5 to NSCC." Do you see that, sir?

6 A. Yes.

7 Q. And you understand that the NSCC was an affiliate of the
8 DTCC?

9 A. Yes.

10 Q. You understand that the NSCC was that organization charged
11 with clearing all the unsettled trades of Lehman?

12 A. I don't know whether it was to clear all of the unsettled
13 trades, but it certainly would've been there to clear some.

14 Q. And in the ordinary course of business when NSCC clears
15 trades and it needs securities, it turns, does it not, to the
16 broker dealer and asks the broker dealer who owns those
17 securities to deliver them, so that it can satisfy those
18 obligations?

19 A. That would be part of -- that would be a natural part of a
20 transaction that needed to be settled.

21 Q. And here you will see, sir, that it is the trustee, not
22 Barclays, the trustee, which is exercising that authority?

23 A. Because the trustee had the authority of the accounts.

24 Q. These are securities that you say belong to Barclays, and
25 in this provision it is the trustee that is authorizing DTC to

1 deliver those securities that you maintain belong to Barclays.

2 A. I don't think this is a reference to the clearance box
3 securities. There were many, many delivery obligations of LBI,
4 which were then in the hands of the trustee, which also
5 required the DTCC to understand instructions for. The
6 appropriate person to give the instructions to DTCC or NSCC at
7 -- thereafter for all of those other clearance and settlement
8 negotiations would've been the trustee.

9 Q. You don't think that this is a reference to the clearance
10 box securities, when this specifically says in the second line,
11 "to deliver securities from the DTC LBI account," you don't
12 think that's a reference to the clearance box securities in
13 that account?

14 A. I don't think that in this discussions -- in the
15 discussions which led to this agreement with the DTCC, as I
16 think I said earlier, there was any discussion of the clearance
17 box assets, period. I think this is an instruction and an
18 authorization by the person responsible for the accounts, that
19 it was necessary for DTCC to fulfill its functions in clearance
20 and settlement terms upon the opening on Monday morning.

21 Q. My question, sir, is the reference to securities and to
22 deliver securities from the DTC LBI account is a reference to
23 the clearance box securities; is it not?

24 A. I don't know whether it is such a reference. As I said, I
25 don't recall any discussion of the sort that you're referring

1 to, and there was no discussion with DTCC specifically about
2 the clearance box securities.

3 Q. Now, sir, let me ask you some questions about the 15(c)(3)
4 asset, and your testimony this morning.

5 I believe you said that it was difficult to put any
6 particular values with any certainty. Now, sir, with respect
7 to the 15(c)(3) assets, there are, in fact, only two components
8 to those assets; cash and government securities; isn't that
9 correct?

10 A. I believe that -- those were the representations at the
11 time, yes.

12 Q. And it is not difficult to value government securities, is
13 it, sir?

14 A. On the whole, government securities are among the easy
15 ones to value.

16 Q. And it is certainly not difficult to value cash.

17 A. It shouldn't be.

18 Q. In fact, the 769 million dollars of government securities
19 in the (c)(3) account were worth exactly 769 million dollars;
20 isn't that right, sir?

21 A. I don't know, in fact, the full composition of the 769
22 million. I don't recall looking at it at the time, and I
23 haven't looked at it since. If they were all government
24 securities at the time, then I would expect that 769 would be a
25 good estimation of that value, but I don't think anybody at

1 Barclays certainly had an opportunity to review those
2 securities in that account at the relevant time, in order to
3 satisfy itself that it was, in fact, worth 769.

4 Q. Will you agree with me that the one billion dollars in
5 cash was certainly worth one billion dollars?

6 A. If it was cash in dollars, then probably it was. If it
7 was there, and as I say, if it was in U.S. dollars at the time;
8 but I don't know.

9 Q. So at the time that the parties appeared before this Court
10 on September 19th, Barclays knowing that there was cash and
11 securities in the 15(c)(3) account, that it maintains it was
12 promised, would have had no difficulty in knowing what the
13 valuation of that cash and those government securities were at
14 the time that it appeared before this Court?

15 A. I wouldn't put it that way. I think that it's fair to say
16 that Barclays had been told that those were the values. All of
17 the parties at the time, who had been privy to the discussions
18 were under the impression those were the values. But as I say,
19 I don't think Barclays, in fact, knew what those values were.

20 Q. Well, if Barclays has been told those values, and Barclays
21 is appearing before the Court seeking approval, a sale order
22 approving this transaction, and Barclays takes the position
23 that it was entitled, absolutely and unconditionally to these
24 assets, then would you agree that that is something, and even
25 if the cash has to be estimated in value, or the government

1 securities have to be estimated in value, at the very least,
2 it's incumbent upon Barclays to make a disclosure to the Court
3 of the nature of the assets that's being transferred?

4 A. As I think I said before, there were many assets in
5 Lehman's business that were coming to Barclays as a result of
6 the sale transaction. Few, if any of them, were capable of
7 being ascertained with certainty. I believe the parties
8 understood as best as they could at that point in time what the
9 approximate valuations of the 15(c)(3) reserve might be, but
10 Barclays had had no opportunity to test the existence of those
11 assets, nor in fact, the valuations associated with them.

12 We were working upon the representations delivered to us
13 by Lehman Brothers at the time, but had no opportunity even to
14 look at the 15(c)(3) reserve calculations to establish whether
15 the representation was accurate or not.

16 Q. Now, sir, you said that -- in your testimony that if --
17 that your understanding was if Lehman could not for any reason
18 give you 769 million dollars from the (c)(3) account, then it
19 would have to give Barclays 769 million dollars from somewhere
20 else. Do you recall that?

21 A. In securities, correct, yes.

22 Q. Right. Now, let me show you the testimony of Harvey
23 Miller at the trial on this point, and that is the April 28th
24 transcript at line (sic) 1008, starting at line 7. You'll see
25 there, it starts:

1 "Q. And that's what led to a heated argument in which you
2 took the position that a representation had been made to the
3 Court that no cash was being transferred to Barclays, and you
4 therefore insisted that one billion dollars in cash not be
5 transferred to Barclays from the restricted customer account?

6 "A. That was one aspect or one branch of the debate, if
7 you want to call it that. The other being that the account was
8 a protected account and should not have been transferred. We
9 also, I might add, gave an admonition to Barclays that the
10 likelihood of the SEC ever releasing that account was slim and
11 none."

12 You saw that testimony, sir?

13 A. Yes.

14 Q. Did Barclays understand at the weekend that the likelihood
15 of it ever getting any assets from the customer reserve
16 account, the protected account, was slim or none?

17 A. No, Barclays didn't understand that. We -- I understand
18 today and the point was raised at the material time, that there
19 was the possibility of a difficulty with respect to that
20 delivery, and certainly at points during that weekend, and
21 indeed on the Friday, the possibility that there might be a
22 difficulty in securing that asset was raised.

23 I don't think Barclays necessarily felt at that point in
24 time, nor since, that the description you just read is
25 accurate. Having said that, there was clearly a discussion

1 about it, and it was precisely because of that doubt that
2 Barclays and Lehman Brothers agreed that if it transpired that
3 there would be such a difficulty, that Barclays would, in any
4 event, get 789 million dollars of securities.

5 Q. Let me show you Mr. Miller's testimony at page 998 of the
6 trial transcript. And starting at line 14.

7 "Q. Did you or anyone that you know acting on behalf of
8 Lehman undertake or give Michael Klein or anyone at Barclays a
9 commitment that if there was a regulatory problem and the 769
10 million dollars in securities could not be transferred from
11 inside the 15(c)(3) account, Lehman would be required to
12 substitute and provide 769 million dollars from somewhere
13 outside that account?

14 "A. Absolutely not."

15 You see that testimony, sir?

16 A. I do.

17 Q. So you'll agree that Mr. Miller was certainly not aware of
18 any such commitment on the part of Lehman?

19 A. He appears not to be from this question and answer,
20 correct.

21 Q. And, in fact, you spoke with Michael Klein, did you not,
22 about this 15(c)(3) account?

23 A. I think before my deposition I did speak to Michael Klein
24 on a number of issues and probably asked him about this.

25 Q. And you found that his recollection was not very strong;

1 isn't that right?

2 A. I think that's probably correct.

3 Q. You found indeed that it was not very clear; isn't that
4 right?

5 A. I may have used that term. But I think that my deposition
6 testimony referred to the discussions between Mr. Miller -- or
7 the discussion that Mr. Miller referred to in the passage that
8 you just described.

9 Q. Now, let me ask you some questions, sir, about the Lehman
10 cash, cash equivalents, and government securities that were
11 used as margin at clearing organizations, okay?

12 A. Before you do, can I just add one comment to my last
13 answer?

14 Q. By all means, sir.

15 A. I didn't think you'd object. My understanding at the time
16 of the transaction, was that there had been a discussion
17 between Lehman Brothers and Barclays with respect to the
18 15(c)(3) asset. And while, as you rightly pointed out, Michael
19 Klein could not remember clearly or with any strength, a
20 discussion with Mr. Miller, it was my understanding at the time
21 that the -- or substantially similar securities, a provision in
22 the agreement was specifically agreed to between Barclays and
23 Lehman Brothers.

24 Q. Now, I believe you said this morning, sir, with respect to
25 Lehman's margin, that it was feasible to do a deal that did not

1 involve margin, a deal without margin.

2 A. I don't think I did say that.

3 Q. I'm sorry?

4 A. I don't think I did say that. I think the essence of what
5 I said was that I could conceive of a situation in which one
6 could construct directly matching exchange traded relative
7 positions that wouldn't necessarily require the obtaining of
8 margin from a separate source to secure those matching
9 exposures. I think I also said that in fact, in this instance,
10 that was not the case, and that for the most part, without that
11 deliberate design, one absolutely would need margin to secure
12 the exposures.

13 Q. Well, if you didn't buy Lehman's cash, then Barclays would
14 have to use its own cash; isn't that right?

15 A. Well, first of all, for these purposes we did take the
16 cash, and if the cash or any other form -- part of the margin
17 had not been available, we wouldn't have taken the exchange
18 traded derivatives business, in which case, all of the margin,
19 in my view, would've been taken by all of the relevant clearing
20 houses in exchanges, and there would've been nothing left.

21 Q. That's not my question, sir. My question is, if you
22 didn't buy Lehman's cash, then Barclays would've had to use its
23 own cash; isn't that correct?

24 A. For what purpose exactly?

25 Q. To keep the clearing agencies comfortable. The clearing

1 agencies want margin, and you don't buy Lehman's margin, then
2 they're going to ask you to put up your own, Barclays' cash,
3 right?

4 A. I think they wouldn't necessarily ask for cash, but
5 certainly the OCC and similar organizations would not have
6 delivered accounts or margin to another party without an
7 agreement to cover the margin relevant to those accounts.

8 Q. And Barclays is a bank, is it not?

9 A. It is.

10 Q. And these days, with all the wonderful technology that
11 Barclays has, it is possible for the bank to transfer cash
12 almost instantaneously; isn't that right, sir?

13 A. I think that's frequently possible, yes.

14 Q. Indeed, did you not tell us this morning, that on Thursday
15 alone, Barclays transferred some forty-five billion dollars of
16 cash to the New York Fed, correct?

17 A. In effect, yes.

18 Q. Now, you referred to the clarification letter, and you
19 also referred to the transfer and assumption agreement. Did
20 either of those documents, in your view, were either of those
21 documents intended to fundamentally change the economics of
22 this sale?

23 A. I don't believe they were intended to change the
24 fundamentals of the deal at all, no.

25 Q. The Lehman margin is an important issue for Barclays; is

1 it not?

2 A. It was a very important issue then, and it comprises
3 significant value for Barclays today, yes.

4 Q. And it's your assertion, sir, that this is something, this
5 agreement between Lehman and Barclays to transfer all four
6 billion dollars of Lehman's cash, cash equivalents, and
7 government securities to Barclays, that agreement is something
8 that was orally agreed before it ever got reduced to writing;
9 is that correct?

10 A. Yes. I think it was also reduced to writing in the APA.

11 Q. But you cannot tell us who it was at Barclays who had this
12 oral agreement with Lehman?

13 A. I am not -- I was not privy to the initial discussions,
14 with respect to the exchange traded derivatives business, but
15 it's clear the parties agreed in the APA that the exchange
16 traded derivatives business would be conveyed, and it was later
17 clarified in the clarification letter, in the ways that we've
18 referred to.

19 Q. And you cannot tell us who is the person at Lehman who
20 orally agreed to transfer all of Lehman's cash, cash
21 equivalents, and government securities to Barclays?

22 A. Again, as I say, I don't know who was involved in the
23 discussion of -- that you describe. I do know that as I say,
24 the exchange rated derivatives business was agreed to be
25 conveyed. I do know that all of the assets used in that

1 business were agreed to be conveyed, and necessarily the margin
2 in whatever form was part of that business and therefore to be
3 conveyed.

4 Q. You have not --

5 A. I'm not sure that an oral discussion is actually necessary
6 for that purpose if it's all written down.

7 Q. I'm not asking whether it's necessary, sir. It's your
8 assertion, you've testified, that there was an oral agreement.
9 In fact, you have no personal knowledge of any such oral
10 agreement; isn't that right, sir?

11 A. I don't have a knowledge of any discussion with respect to
12 the margin price at the signing of the APA, no.

13 Q. In fact, you haven't even asked anyone about that oral
14 agreement, have you, sir?

15 A. I can't now remember whether I've raised that specific
16 point. It may be that I haven't.

17 Q. Let me ask you to refer to your deposition transcript at
18 page 115. Starting at line six, "When did margin become part
19 of the sale transaction?"

20 "A. When did margin become part of the sale transaction?
21 At the beginning.

22 "Q. In the original APA?

23 "A. It was agreed orally before it ever got reduced to
24 writing in the APA, but it was subsequently included in the
25 APA.

1 "Q. When you say it was agreed orally, who from Barclays
2 agreed to that?

3 "A. I haven't asked that specific question of anybody, so
4 I can't tell you a specific answer. The people negotiating on
5 behalf of Barclays at that time, and indeed throughout,
6 included the names we mentioned before, Michael Klein, Archie
7 Cox. There were also a number of people in the early part of
8 the week of the 15th discussing certain types of assets, and it
9 is probable, though I haven't yet checked, that there was a
10 discussion among some of those people with respect to the
11 exchange traded derivatives."

12 Do you see that, sir?

13 A. Yes.

14 Q. Now, this was a topic, a specific topic for your
15 designation as a Rule 30(b)(6) witness, was it not?

16 MR. BOIES: Objection, Your Honor.

17 THE COURT: What's the objection?

18 MR. BOIES: This is way outside of any cross-
19 examination I did.

20 THE COURT: Well, I think it's not outside in this
21 respect, Mr. Boies. The examination that you conducted this
22 morning included a review of the letter with the DTC, issues
23 surrounding exchange trade derivatives and the clearance box
24 assets. This is examination with respect to this witness's
25 knowledge concerning that subject, and I believe as a result

1 that it's perfectly appropriate cross-examination. So I
2 overrule your objection. I believe it's within the scope.

3 BY MR. MAGUIRE:

4 Q. This negotiation of the deal concerning margin was a
5 specific topic for your deposition, was it not, sir?

6 A. I think it was, yes.

7 Q. That notice was served on Barclays on November 3, and you
8 were deposed on January 15; isn't that correct?

9 A. I think that's probably right. I don't recall the
10 specific dates. I don't have any reason to think that's wrong.

11 Q. And at no time in that intervening period or since, have
12 you asked the question, who is the person at Barclays who had
13 this oral agreement for Lehman's margin with someone at Lehman;
14 isn't that correct?

15 A. I certainly don't recall asking that specific question,
16 and I don't think, I haven't asked it subsequent to my
17 deposition. I did -- there were a lot of subjects that I was
18 trying to cover as a 30(b)(6) witness. If I said that at the
19 time, then it's accurate.

20 Q. So you testified at your deposition about an oral
21 agreement of which you had no personal knowledge, and about
22 which you had not asked anyone; isn't that correct?

23 MR. BOIES: Objection, Your Honor.

24 THE COURT: What's this one?

25 MR. BOIES: That the conduct of the 30(b)(6)

1 deposition and what he did or didn't do in preparation for a
2 30(b)(6) deposition, that if they didn't like it, they could've
3 complained to the Court a long time ago is not proper redirect
4 examination.

5 THE COURT: I think this is impeachment. I'm going to
6 overrule your objection, and it's obviously noted as part of
7 the record, but the quality of this witness's actual knowledge
8 of the subject matter as to which he has testified is fair
9 game. Overruled.

10 THE WITNESS: I don't have actual personal knowledge
11 of a discussion of the type. It was my understanding that
12 there had been discussions prior to the signing of the APA, but
13 I don't have any actual personal knowledge of that.

14 BY MR. MAGUIRE:

15 Q. Sir, let me show you Mr. McDade's testimony on the first
16 day of trial at page 603 of the trial transcript. Starting at
17 line 3:

18 "Q. Can you please tell the Court whether Lehman's margin
19 assets were included in the sale?

20 "A. They were not intended to be included in the
21 transaction.

22 "Q. Did you ever authorize any agreement with anyone at
23 Barclays to include any Lehman cash margin in this sale?

24 "A. No, I did not."

25 Do you see that testimony, sir?

1 A. I do.

2 Q. So if anyone at Lehman entered into any purported oral
3 agreement with anyone at Barclays concerning Lehman's margin,
4 it was certainly without the knowledge or authority of the
5 president of the company, Bart McDade, correct?

6 A. It appears from that testimony that Mr. McDade is not
7 aware of such an agreement. He was not the only person
8 negotiating the agreement.

9 Q. Let me show you, please, Movant's Exhibit 2. You were
10 here when Mr. McDade testified about this document, were you
11 not?

12 A. I believe so, yes.

13 Q. About the exchange traded derivatives under the asset
14 side, those positions, four and a half billion dollars? You
15 were here for that?

16 A. I think I was here for all of his testimony.

17 Q. And when he described the positions, the four and a half
18 billion dollars of short positions under liabilities, you were
19 here for that, too?

20 A. I was.

21 Q. Now, sir, if we were to add four billion dollars of Lehman
22 margin to the asset side of this balance sheet, that would
23 fundamentally change the economics of this transaction; would
24 it not?

25 A. I don't think I can answer that without knowing what those

1 numbers comprised at the time. And as I think I've said
2 before, Barclays was not in a position at the time of the
3 authorship of this document to know what was in Lehman's margin
4 assets.

5 Q. Now, sir, now Lehman maintained accounts for its customers
6 at the Options Clearing Corporation; isn't that right?

7 A. I believe so, yes.

8 Q. In fact, all of the exchange traded derivatives trading
9 that Lehman did for its clients, its customers, at the OCC, all
10 of those went through Lehman's accounts at the OCC?

11 A. I'm not sure I could say that absolutely and with
12 certainty. I would imagine that certainly some of it did.

13 Q. When customers posted cash to the -- to Lehman, they gave
14 Lehman cash as margin for their trading on the OCC, Lehman kept
15 that cash off the exchange in money market funds and not at the
16 OCC. Are you aware of that?

17 A. I have no knowledge of that.

18 Q. Well, are you aware that when the OCC demanded cash margin
19 to cover customer trading, Lehman put up not customer cash, but
20 its own cash at the OCC?

21 A. I'm not sure that I'm sufficiently familiar with Lehman
22 practices at the time to be able to answer that question.

23 Q. So, you, yourself cannot tell us whether all of the Lehman
24 cash at the OCC belonged to Lehman or belonged to customers?

25 A. I don't think I would be able to identify with that degree

1 of detail. I do think it's right to say that all of that cash
2 or margin of any other form was being used in that business,
3 and was therefore part of what was agreed to be conveyed to
4 Barclays.

5 Q. Now, you were shown by your counsel an e-mail that
6 referred to one billion dollars of cash at the OCC. Do you
7 recall that?

8 A. Yes.

9 Q. Did Barclays know that all of that cash belonged to Lehman
10 and not to Lehman's customers?

11 A. I'd have to be sure about the particular e-mail, but I
12 think that at that point in time Barclays was not sufficiently
13 knowledgeable one way or another to know where the cash came
14 from, to whom it was referable, which contracts it was
15 referable to. I don't think we had that information, where it
16 was at the relevant time.

17 Q. Now, Barclays did come to learn over the weekend of the
18 clarification letter that there was some two billion dollars of
19 cash margin and government securities at the OCC that was all
20 Lehman property, right?

21 A. Again, I couldn't tell you specifically what the amounts
22 of cash were suggested to be there at that point in time. As I
23 think I said earlier, I do recall there was communication, at a
24 minimum by e-mail among a number of parties, that identified
25 cash, but I don't have a recollection sitting here now, what

1 exactly those amounts were.

2 Q. Well, let me see if I can help you by showing you Movant's
3 Trial Exhibit 503. These are some notes of a Barclays
4 employee, Elizabeth James, for her deposition.

5 MR. MAGUIRE: And if you can just highlight the 9/21
6 entry at the bottom of the page.

7 Q. This refers to the report that Barclays obtained from the
8 OCC reflecting values as of 9/19 and 9/22. At 4:07 p.m.,
9 Barclays receives this e-mail with a report reflecting that as
10 of Friday, the total margin is in excess of two billion
11 dollars. Do you see that, sir?

12 A. I haven't -- I don't think I've seen this before. I don't
13 see any reference to margin there. I think it says report
14 reflecting 9/19 date showed a total of two billion order. It
15 doesn't right there, at least, tell me exactly what that's
16 referring to.

17 Q. I don't need to delay you on this. I'll represent to you
18 that over the weekend Barclays received a report from the OCC
19 disclosing in excess of two billion dollars of Lehman margin at
20 the OCC.

21 My question for you, sir, is this: Did anyone from
22 Barclays make any effort to explain to the trustee that all of
23 the cash, cash equivalents, and government securities at the
24 OCC, including all of the margin that was covering customer
25 accounts and customer trading activities all belonged to

1 Lehman, and was all going to be transferred to Barclays, not
2 for customer accounts, but for the account of Barclays?

3 Did anyone try to explain that to the trustee?

4 A. First of all, this information, as I -- assuming is the
5 information you describe it to be, at the time was clearly very
6 recently received, without any opportunity to assess its
7 accuracy or otherwise. I am not aware today, nor was I then,
8 of a specific discussion advising the trustee as to what the
9 breakdown of the margin would be, by type, or whether it was
10 referable to customers, or to proprietary activities of Lehman
11 Brothers. But I do recall, as we've earlier discussed, it was
12 plain from the OCC communications to the trustee, that there
13 were substantial amounts of margin that it wanted to convey to
14 Barclays in order that it could properly cover OCC positions.

15 I believe it was very clear from the collateral agreement
16 on the night of the sale hearing, and also through the TAA, and
17 during the course of the weekend, that all of that margin was
18 going to be conveyed in whatever form, and for whatever purpose
19 it had previously been held.

20 Q. Let's leave aside the trustee for one moment, sir, and let
21 me show you testimony of Mr. Harvey Miller at this trial at
22 page 1008. Starting at line 22:

23 "Q. You mentioned in your last answer, I believe or the
24 previous answer, margin, sir, and you personally did not have
25 any discussions with anyone at Barclays about Lehman's margin;

1 isn't that right, sir?

2 "A. That's correct.

3 "Q. By Lehman's margin, you understand Lehman's cash, cash
4 equivalents, and government securities that Lehman posted as
5 collateral with the clearing corporations?

6 "A. Correct.

7 "Q. And indeed, you were not aware of anyone at your firm,
8 the Weil Gotschal law firm who had any discussions with anyone
9 at Barclays concerning the question of Lehman's margin?

10 "A. As far as I'm aware, that's correct."

11 So there was certainly no disclosure to Mr. Miller or his
12 firm about any transfer of billions of dollars of Lehman margin
13 to Barclays; isn't that correct, sir?

14 A. I don't think that is correct. I think it was plain from
15 the e-mails we discussed earlier, and I'm not sure that we
16 discussed all of them, that people at Weil Gotschal were
17 included in those e-mails, from which I think it was very plain
18 that there was margin, there was cash margin, and all of it was
19 going to go from the OCC to Barclays.

20 Q. And, sir, let me ask you about the creditors' committee.
21 There was certainly no disclosure by Barclays to the creditors'
22 committee concerning the margin; isn't that correct?

23 A. I don't recall a specific discussion between Barclays and
24 the creditors' committee about margin, but for the reasons I've
25 alluded to earlier, I think it was plain to those present

1 during that weekend, that the margin was intended to be
2 conveyed. I think it was also easily deducible from the APA.

3 Q. Now, sir, you were asked by your counsel some questions
4 about the sale order, and specifically about the words that
5 came after reasonably equivalent value, the words "or fair
6 consideration." Do you recall that testimony?

7 A. Yes.

8 Q. Barclays understood, did it not, that it was not for
9 Barclays to make the call as to whether the consideration here
10 was fair; isn't that correct?

11 A. I'm not sure what you mean by "make the call."

12 Q. You understood that that was a question that was reserved
13 exclusively for the Court, not for Barclays?

14 A. The determination as to whether, in fact, there was fair
15 consideration was one for the Court, I agree.

16 Q. And in order to permit the Court to conduct that judicial
17 inquiry and to make a finding, it was important, was it not,
18 sir, for the parties to provide the Court with an understanding
19 of the economics of the sale?

20 A. Yes, and I believe that happened.

21 Q. And that happened without providing the Court the total
22 amount of assets that Barclays was acquiring?

23 A. It certainly wasn't a total valuation, that's correct.

24 Q. And that happened without telling the Court about the
25 15(c)(3) assets?

1 A. I don't recall any specific reference to that during the
2 sale hearing, no.

3 Q. And that happened, sir, without disclosing to the Court
4 the transfer of Lehman's cash, cash equivalents, or government
5 securities used as margin; is that right, sir?

6 A. Again, there was I think knowledge that cash and other
7 securities were to be conveyed. I think there was a reference
8 to it in the sale order. Whether it was disclosed in precisely
9 the fashion you've just recited, I don't think it was.

10 Q. Now, sir, I believe you said or you were asked by your
11 counsel about the uncertainty as to what, if anything, there
12 would be by way of a day one gain for Barclays. Do you recall
13 your testimony on that subject?

14 A. I recall questions and answers. I can't recall the
15 specific testimony.

16 Q. In fact, sir, it's your understanding, based on all of the
17 work that the Barclays' due diligence teams did, that Barclays
18 was in a position to be highly confident that this transaction
19 would involve a day one gain and be capital accretive for
20 Barclays, correct?

21 A. I think that's correct.

22 Q. In fact, Mr. Diamond was in a position, was he not, to be
23 highly confident in telling the Board that this transaction
24 would be capital accretive?

25 A. I believe that was a part of Mr. Diamond's testimony at

1 deposition, yes.

2 Q. And Mr. Diamond had sufficient information to be in the
3 position to tell the Board that conclusion, correct?

4 A. I believe so, yes.

5 Q. So none of the various uncertainties that existed
6 precluded Mr. Diamond from accurately representing to the Board
7 that he was highly confident this transaction was capital
8 accretive; isn't that correct?

9 A. That's correct, but the uncertainties remained.

10 MR. MAGUIRE: Thank you, sir. I have no further
11 questions.

12 THE COURT: Mr. Boies, was there anything you wished
13 to add to this?

14 MR. BOIES: Yes, Your Honor.

15 FURTHER RECROSS-EXAMINATION

16 BY MR. BOIES:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Mr. Maguire spent a lot of time talking about a possible
20 oral agreement. Is Barclays, insofar as you understand it,
21 relying on any oral agreement in this proceeding?

22 A. No.

23 Q. What is Barclays relying on, as you understand it, sir?

24 A. The APA and the sale order.

25 Q. And when you refer to the APA, do you include the

1 clarification letter?

2 A. Yes.

3 Q. And do those make clear that the 15(c)(3) assets are being
4 conveyed to Barclays?

5 A. Yes.

6 Q. And did the trustee sign the clarification letter?

7 A. Yes, among other documents.

8 Q. And did the trustee ever complain to Barclays that the
9 15(c)(3) assets should not be conveyed to Barclays?

10 A. Not only did the trustee not complain about the 15(c)(3)
11 assets, the trustee didn't complain until a long time
12 afterwards about the margin, about cash, about the clearance
13 box assets, or indeed any of the assets that had been a
14 substantial portion of this discussion.

15 Q. And did the trustee, at the time of closing, or at any
16 reasonable time after the closing, come to the Court and say,
17 Barclays is getting this 15(c)(3) assets, and these clearance
18 box assets that are specified in the clarification letter?

19 MR. GAFFEY: Objection, Your Honor, issue of
20 reasonable time is for the Court, not the witness.

21 THE COURT: I'm sorry, what was the objection?

22 MR. GAFFEY: The question included whether or not
23 Movants came within a reasonable time. That's not an issue the
24 witness is competent to testify to.

25 MR. BOIES: I'll withdraw the question and put another

1 one, Your Honor.

2 THE COURT: Okay. That's even better.

3 BY MR. BOIES:

4 Q. Did the trustee or any Movant come to the Court at the
5 time of the closing and say, Barclays is being given exchange
6 traded derivative assets and margin and 15(c)(3) assets in the
7 clarification letter, and we object to that? Did they do that
8 at the time the clarification letter was signed, or at the time
9 of the closing?

10 A. No.

11 Q. Did they do that at any time in September of 2008?

12 A. No. And during that month, they continued to deliver
13 assets which comprised margin, they continued to deliver cash,
14 they continued to deliver clearance box securities.

15 Q. And did they come to the Court at any time and object that
16 Barclays was being given, and they in fact, were giving and
17 authorizing the giving of these assets to Barclays at any time
18 in October of 2008?

19 A. No.

20 Q. At any time in November of 2008?

21 A. No.

22 Q. They showed you some testimony from Mr. Miller. Let me
23 ask you to look at pages 1005 and 1006 of the trial transcript.
24 And at line 14 and 15, Mr. Miller is referred to where he told
25 the Court at the hearing, "cash, we're not transferring any

1 cash to Barclays, that's out of the agreement." And Mr. Miller
2 says "Yes." And the next question is,

3 "And the representations that you made and that Ms. Fife
4 made to the Court, that was entirely consistent with your
5 understanding of the transaction; isn't that correct?"

6 "A. Yes. In referring to free cash, unencumbered cash.

7 "Q. I believe you said, we're not transferring any cash to
8 Barclays, that's out of the agreement. When you say free cash,
9 that's obviously cash, sir, but I understand what you said to
10 the Court was, we are not transferring any cash. Was there
11 some variety of cash that you are excluding from your
12 representation?"

13 And obviously from the record, this is Movant's
14 examination of Mr. Miller. Mr. Miller answers "There was
15 margin cash associated with a customer account. They,"
16 referring to Barclays, "were taking the customer account. They
17 were taking the whole cash, so if there was collateral cash in
18 that account, that cash would go with the customer account."

19 "Q. You weren't discussing customer property here, you
20 were talking about Lehman's own proprietary property?

21 "A. I may. Your use of the word customer cash,
22 collateral, margin payments, I'm not sure how you would
23 characterize that as whether it is Lehman cash or customer
24 cash. As a general proposition with the accounts being
25 transferred, everything relating to those accounts was being

1 transferred."

2 Do you recall that testimony, sir?

3 A. I do.

4 Q. Do you agree with it, sir?

5 A. I do agree with it.

6 Q. Now, Counsel for the Movants also asked you about a line
7 in the DTCC agreement that talked about the NCCC.

8 MR. BOIES: And can we put up that page again on the
9 screen, so everybody can see it?

10 Q. Let's begin with what Mr. Maguire first directed your
11 attention to, which is at paragraph number one, where he read
12 you about how Barclays has indicated and hereby agrees that all
13 the accounts of LBI maintained at the clearing agency
14 subsidiaries, the accounts constitute excluded assets within
15 the meaning of the APA.

16 And then he asked you about that language and you drew a
17 distinction between the accounts themselves, and the assets in
18 those accounts; am I correct?

19 A. Yes.

20 Q. He then dropped down, skipping several sentences, and
21 directed your attention to a point where it reads, "As part of
22 this close-out process, the trustee hereby authorizes DTC to
23 accept and act upon instructions from NSCC to deliver
24 securities from the DTC LBI account to NSCC's account, in order
25 to reduce or eliminate LBI's outstanding delivery obligations

1 to NSCC."

2 Do you see that, sir?

3 A. I do.

4 Q. Now, what he didn't direct your attention to is what is in
5 between. And that says, "Accordingly, pursuant to the
6 authority granted to the trustee in the orders, the trustee
7 hereby instructs the clearing agency subsidiaries to close out
8 the pending transactions in the accounts of the clearing agency
9 subsidiaries, and to use the proceeds in accordance with the
10 rules and procedures of the clearing agency subsidiaries. Such
11 liquidation transaction shall be transferred to and closed out
12 by the relevant clearing agency subsidiary, in the same manner
13 as it closes out positions of participants, members from whom
14 it has ceased to act."

15 Do you see that, sir?

16 A. Yes.

17 Q. And this was all related to closing out transactions that
18 had begun, but had not been completed, correct, sir?

19 A. That's correct.

20 Q. It was designed -- the whole point of this was designed to
21 allow these trades in progress to finish, correct, sir?

22 A. Correct.

23 Q. Did this have anything to do at all with a question of
24 what assets Barclays vis-à-vis Lehman was entitled to?

25 A. Nothing.

1 MR. BOIES: I have no more questions, Your Honor.

2 THE COURT: Is there anything more, Mr. Maguire?

3 MR. MAGUIRE: Nothing further, Your Honor.

4 THE COURT: Mr. Hughes, you'll be pleased to hear that
5 you're excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: My next witness is Mr. Seery. You must be
8 Mr. Seery. Please raise your right hand.

9 JAMES SEERY, WITNESS, SWORN

10 THE COURT: Be seated, please.

11 MR. WERDER: Good afternoon, Your Honor, Richard
12 Werder from Quinn Emmanuel for the Committee.

13 DIRECT EXAMINATION

14 BY MR. WERDER:

15 Q. Good afternoon, Mr. Seery.

16 A. Good afternoon.

17 Q. Will you state your name, your full name for the record,
18 please?

19 A. James Seery.

20 Q. And taking you back, Mr. Seery, to the week of September
21 15th of 2008, where were you employed at that time?

22 A. Lehman Brothers.

23 Q. And how long had you been at Lehman Brothers as of
24 September of 2008?

25 A. Nearly ten years.

1 Q. What was your position in September '08?

2 A. I was a managing director.

3 Q. And were you a managing director responsible for some
4 particular area within Lehman?

5 A. I was.

6 Q. What was the area that you were responsible for?

7 A. I was responsible for the fixed income loans.

8 Q. To whom did you report?

9 A. Alex Kirk.

10 Q. And did you have people that reported to you?

11 A. I did.

12 Q. Approximately how many?

13 A. It was a moving number, but at least five and sometimes up
14 to ten or fifteen.

15 Q. Were those direct reports or did you intend to include
16 indirect reports within that number?

17 A. Five were definitely direct, and sometimes that number
18 would grow, depending on whether we put someone in between
19 myself and that group.

20 Q. After the closing of the sale transaction between Lehman
21 and Barclays, did you go to work for Barclays?

22 A. I did.

23 Q. Was that consistent with your expectation prior to the
24 closing of the sale?

25 A. No.

1 Q. Did you assume prior to the closing of the sale that
2 Barclays would want to hire you?

3 A. I assumed that I'd have an opportunity. I didn't have an
4 expectation that I'd take it.

5 Q. You had an assumption but not an expectation that you
6 would necessarily go there?

7 A. That's correct.

8 Q. Were you looking at other opportunities at the time?

9 A. At that point I was, yes.

10 Q. Okay. But your assumption during the week of September
11 15th was that if you wanted to go to Barclays, there would be a
12 position there for you?

13 A. Yes.

14 Q. And was that assumption based upon any information that
15 had been conveyed to you, either by someone from Barclays or by
16 someone from Lehman?

17 A. At what time?

18 Q. During the week of September 15th when you had the
19 assumption that you would have the opportunity to go to
20 Barclays if you so desired?

21 A. Let me clarify. If the sale closed, I thought I'd have an
22 opportunity to go to Barclays. I didn't have any discussions
23 with anyone prior to the execution of the asset and purchase
24 agreement. I don't recall exactly when I finally had a
25 discussion with somebody at Lehman Brothers that there would be

1 an opportunity.

2 Q. And you did, in fact, go to Barclays after the sale
3 closed, correct?

4 A. I did.

5 Q. And what was the position that you assumed at Barclays
6 when you joined them?

7 A. I was a managing director.

8 Q. Were you a managing director in any particular area of the
9 Barclays business?

10 A. I didn't have a specific responsibility.

11 Q. And is it fair to say that the -- your role at Barclays
12 after the close was somewhat undefined?

13 A. Initially, it was defined, and that we moved over the loan
14 business to Barclays. Thereafter, because they run their
15 business very differently, there wasn't a role that fit exactly
16 what I had done previously, and because of the seniority I had,
17 there really wasn't a great fit within the same framework that
18 I had at Lehman Brothers. So I looked at other opportunities
19 within Barclays.

20 Q. And then did you ultimately end up leaving Barclays?

21 A. I did, yes.

22 Q. And did you leave Barclays because there wasn't a good fit
23 between your -- the responsibilities that you were being given
24 and your experience?

25 A. No. It was a number of other reasons, but I was offered

1 some significant roles at Barclays that were interesting to me,
2 but they weren't precisely what I wanted to do, and there was
3 an opportunity to look at something different after this
4 experience and consider other options.

5 Q. While you were at Barclays, did you have anyone report to
6 you?

7 A. No, I did not.

8 Q. To whom did you report while you were at Barclays?

9 A. That was an open question; I really didn't know.

10 Q. Okay. For the -- you were at Barclays from approximately
11 September of 2008 to May of 2009, correct?

12 A. That's correct.

13 Q. And during that period of time, you didn't know who you
14 were reporting to?

15 A. That's correct.

16 Q. How much were you paid by Barclays for the period of time
17 when you were there?

18 A. I had a base salary, I think it was approximately 200,000
19 dollars. I don't really know.

20 Q. And did you receive a bonus as well?

21 A. I received a bonus for 2008 that Barclays had covered as
22 part of the package, and I received a retention payment along
23 with that bonus.

24 Q. Okay. And what was the total, approximately?

25 A. I don't know.

1 Q. Okay. Was that sum paid to you pursuant to an agreement?

2 A. Yes, it was.

3 Q. And is it fair to say that that sum totaled several
4 million dollars, sir?

5 A. Yes.

6 Q. When did -- you left Barclays in May of 2009, correct?

7 A. That's correct.

8 Q. And did you have a severance agreement when you left
9 Barclays?

10 A. I did, yes.

11 Q. Did that agreement require that you cooperate with
12 Barclays for purposes of this litigation in any way?

13 A. Not to my recollection, no.

14 Q. Is there any reference to this litigation in your
15 severance agreement?

16 A. Not that I recollect, no.

17 Q. When you left Barclays, did you have any discussions with
18 anybody at Barclays concerning any role that you might play in
19 this litigation after you left?

20 A. Not at all.

21 Q. And where are you currently employed, sir?

22 A. Sidley and Austin.

23 Q. At Sidley and Austin, have you done work for Barclays?

24 A. I have, yes.

25 Q. And leaving aside the work that you've done for Barclays

1 at Sidley and Austin, have you met with Barclays' counsel since
2 leaving Barclays in connection with this litigation?

3 A. Yes, I have.

4 Q. And approximately how many times have you done so?

5 A. Three or four.

6 Q. And what was the most recent one, sir?

7 A. This morning.

8 Q. You met with counsel for Barclays this morning?

9 A. Yes, I did.

10 Q. Did you meet with them yesterday also?

11 A. I did, yes.

12 Q. And including yesterday and this morning, is the total
13 amount of times that you've met with Barclays in connection
14 with this litigation three or four?

15 A. Yes.

16 Q. And in addition to those -- were those in-person meetings?

17 A. Yes, they were.

18 Q. In addition to those in-person meetings, were there
19 additional times when you communicated with counsel for
20 Barclays concerning this litigation by other means?

21 A. Sporadically by phone, we may have exchanged e-mails.

22 Q. And you have, in fact, cooperated with Barclays in the
23 defense of this litigation, have you not?

24 A. They've asked me questions and I've responded.

25 Q. Okay. And who did you meet with this morning when you met

1 with Barclays' counsel?

2 A. I met with Mr. Stern and Mr. Schiller.

3 Q. Okay. And are those the same two gentlemen that you met
4 with yesterday?

5 A. They are.

6 Q. Was anyone else there when you met with them?

7 A. They had certain associates coming in and out of the room,
8 yes.

9 Q. Okay. And is it fair to say that you met with them in
10 preparation for your testimony here today?

11 A. It's fair to say that I met with them to review my prior
12 testimony and to prepare for this hearing, yes.

13 Q. Okay. And going back to the question I asked you a couple
14 of questions ago about the -- your cooperation with Barclays,
15 you said that they've asked you questions and you've responded
16 to them. You also gave a declaration in this litigation in
17 January of 2010; did you not?

18 A. I did, yes.

19 Q. And that was after the first deposition that you had given
20 in the case, and before the second deposition, correct?

21 A. I believe that's correct.

22 Q. And was the declaration that you gave in January of 2010,
23 something that Barclays asked you to do?

24 A. It is, yes.

25 Q. And it was something that you agreed in response to their

1 request to do, correct?

2 A. Yes.

3 Q. Did you meet with Barclays' counsel concerning the
4 declaration?

5 A. No.

6 Q. Did you discuss the declaration with them over the phone?

7 A. Yes.

8 Q. And did they provide -- did they give you some indication
9 of the topics, the subject matters that they hoped to have you
10 cover in a declaration?

11 A. Of course.

12 Q. And did they give you some indication about what they
13 hoped that the declaration would say?

14 A. I'm not quite sure what the question means. They asked me
15 about certain facts related to the case at that point, certain
16 notes that they provided to me, what my review of it was, and
17 they provided me with a summary, a written summary, of that
18 explanation that I gave them. I marked that up, and they
19 provided it back to me, I made additional corrections or
20 changes, and then executed it.

21 Q. And you, in fact, executed the declaration when you were
22 in Alta, Utah, correct?

23 A. Yes. The actual signature on it is my assistant's, and I
24 did it by phone.

25 Q. Okay. I mentioned -- we mentioned a couple of moments

1 ago, the two depositions that you'd given in the case. Both of
2 those depositions were taken after you had left Barclays,
3 correct?

4 A. I believe so, yes.

5 Q. The first one was in September of 2009, that would've been
6 after --

7 A. Yes.

8 Q. -- you left Barclays, right?

9 A. That's correct.

10 Q. Okay. And the second one obviously was later than that.
11 Did you have any preparation sessions with Barclays' counsel in
12 preparation for either of the two depositions that you gave in
13 this case?

14 A. I believe I had one. I don't know if it was by phone or
15 in person for the first one, I don't recollect if I had one for
16 the second one.

17 Q. You think you had one for the first, but you're not sure
18 about the second?

19 A. Right. So my count of four would be today, yesterday,
20 Friday, and the one prior to the first one. I don't believe I
21 had one for the second one, I could be wrong.

22 Q. Okay. And in the session that you had with Barclays, the
23 sessions that you had with Barclays' counsel yesterday and
24 today, did you review any documents?

25 A. Yes.

1 Q. What documents did you review?

2 A. There were many documents that I believe are all exhibits
3 that I've seen in various deposition testimony that I've given.

4 Q. And did you review deposition transcripts in the meetings
5 yesterday or today?

6 A. I certainly reviewed my deposition transcript. I don't
7 recall if I looked at anyone else's. There may have been
8 snippets of other depositions.

9 Q. Okay. Did you review any trial testimony from last week
10 of this proceeding?

11 A. I don't believe so.

12 Q. Did you have trial testimony of any witness summarized for
13 you by Barclays' counsel?

14 A. Written? I believe orally, yes; written, no.

15 Q. Whose testimony was summarized for you orally?

16 A. Mr. Miller's. I don't believe Mr. -- I don't recollect if
17 Mr. Ridings' was trial testimony or deposition testimony, and
18 that's about it.

19 Q. Anyone else?

20 A. I think that's about it.

21 Q. Okay. And was there any review in the course of the
22 session yesterday or today about the types of questions that
23 Barclays' counsel expected you might be asked today?

24 A. There was review of the topics, not the types of
25 questions.

1 Q. Okay. And did they review with you the questions or the
2 topics that they intended to examine you about at today's
3 hearing?

4 A. Yes.

5 Q. Okay. And you don't work for Barclays anymore or have any
6 confidential relationship with them, do you, sir?

7 A. I do not.

8 Q. All right. At yesterday's meeting, did you -- did
9 Barclays' counsel provide you with an errata sheet for the
10 deposition that you gave in March of this year?

11 A. Yes. Yes, they did.

12 Q. And was that an errata sheet that Barclays' counsel had
13 prepared and then gave to you?

14 A. Yes. It came out of discussion we had in reviewing the
15 testimony, and I believe it was in the morning or on Friday
16 where certain words were wrong. There's a number of mistakes
17 in the transcript, which I had not seen previously. When I saw
18 it on Friday, it includes references to the word mark written
19 as marked, mark as market, a number of mistakes like that.
20 There's also a number of places where I think the stenographer
21 just inserted words where maybe I had paused.

22 So for example, where a number of places it says, you
23 know, I don't recall ever saying that. I'd like to see the
24 videotape to determine whether I did.

25 Q. All right.

1 MR. WERDER: May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 THE WITNESS: Excuse me, can I -- thanks.

4 BY MR. WERDER:

5 Q. Mr. Seery, we've been using these binders of exhibits for
6 convenience, and there are a number of tabs in your particular
7 binder. What I'd like you to do is to direct your attention to
8 the tab that's marked M-714. Leaving aside the first page,
9 which is an e-mail from one of Barclays' lawyers to some of the
10 Movant's lawyers yesterday afternoon, can you identify the
11 certification as the certification that you filed yesterday?

12 A. That is my signature, yes.

13 Q. Okay. And is it your testimony that this document was
14 prepared by Barclays' counsel based upon some prior
15 communication that you had had with them?

16 A. My testimony was that we'd reviewed the transcript. They
17 prepared this going through certain changes, which I reviewed
18 the changes, and this is the sheet that I signed.

19 Q. Maybe I --

20 A. I didn't quite understand your question.

21 Q. I think I misunderstood you. So you had a discussion
22 about the transcript yesterday, and that resulted --

23 A. I don't recall if it was Friday or yesterday morning, and
24 at some point during yesterday's discussion, after reviewing
25 certain of the changes, for example, as I mentioned, Sal to

1 Saul, marked to mark, they prepared this, I reviewed it again,
2 and then executed the certification on the front.

3 Q. And you mentioned specifically the word marked and market,
4 and it's true, is it not, that the changes that you've made,
5 changed the word market to the word marked for some number of
6 instances of the use of those words, correct?

7 A. Yeah. I think if you go through the deposition
8 transcript, you can see the context where it's wrong.

9 Q. And did you go back and review the videotape of the
10 deposition before making these changes and signing the
11 certification?

12 A. I did not. I think a minute ago I said I didn't review
13 the videotape.

14 Q. Okay. And so then my question would be whether the
15 changes that you made specifically with respect to the use of
16 the word marked versus market, were those changes intended to
17 correct something that you thought that the reporter had failed
18 to transcribe correctly, or were they changes that were
19 intended to correct an answer where you might have used the
20 wrong word in the deposition?

21 A. The former.

22 Q. And other than -- how did you -- what did you do to
23 determine that you thought the reporter had made a
24 transcription error with respect to the use of the word marked
25 versus market?

1 A. I don't recall which of these specific items led to this
2 discussion with Barclays' counsel, but we noticed one where it
3 was clearly wrong, and you could see it in the context of the
4 sentence. And so we went back, and they went back and reviewed
5 it further and found others. And there was, as I mentioned, a
6 number of other items that were just clean-up items.

7 Q. And did you ask anybody on the Barclays team to go and
8 check the videotape to make sure that it was a transcription
9 error versus some error that you now perceived with the benefit
10 of hindsight?

11 A. No, I did not.

12 Q. Okay. Did Barclays' counsel in the course of the meeting
13 that you had with them, or either of the meetings that you had
14 with them, or the call that you may have had with them on
15 Friday, did they point out to you the issue with respect to the
16 use of the word market versus marked?

17 A. I don't recall who pointed it out to whom, but it came up
18 in our discussion and it was wrong.

19 Q. You don't recall who --

20 A. Whether I pointed it out or whether they pointed it to me,
21 and asked, did you say this, and I would have said no.

22 Q. Okay. And you remember your deposition from March well
23 enough to know that you -- the word that you used at the time
24 without going back to the videotape, is that --

25 A. I believe I testified that you could see it from the

1 context.

2 Q. And that's the basis? Is that the sole basis for your
3 correction the -- your after the fact reading of the sentences
4 in context?

5 A. It'd be hard to correct it before the fact.

6 Q. Okay. Let me, if I could, direct your attention to --
7 away from the meetings that you've had over the last couple of
8 days, back to the week of September 15th. And at some point
9 during the week of September 15th of 2008, did you become aware
10 of what has been called the Fed REPO transaction?

11 A. I did.

12 Q. And were you involved in setting up the Fed REPO
13 transaction?

14 A. I was not.

15 Q. During the week of September 15th of 2008, did Barclays,
16 for want of a better phrase, step into the shoes of the Fed on
17 the REPO?

18 A. Barclays took over the REPO from the Fed. You have to
19 remember how REPO actually works. At night, all the securities
20 -- these securities are not financed with equity entirely.
21 There's debt against them. The Fed had stepped into a REPO,
22 stepped into a REPO that had been REPO'd out to the street many
23 times. That financing came from the Fed for a few days.
24 They'd made very clear from my time at the Fed until it
25 actually happened that they wanted out, and they wanted out of

1 that risk fast. They didn't like the risk, they didn't want to
2 be in that position.

3 Barclays started to take some of the securities back, but
4 each day that Barclays stepped more and more into that
5 position, the securities could change during the day. So when
6 we say stepped into, it wasn't as if they took an assignment of
7 a particular collateral package that goes back to the clearing
8 broker during the day, and then it gets back REPO'd out at
9 night, and yes, I was aware that Barclays had done that.

10 Q. And did that happen gradually over the course of the week,
11 or did that happen in one fell swoop on one day, to your
12 recollection?

13 A. My recollection is that it started on Tuesday or Wednesday
14 with Barclays taking about three billion dollars of REPO, and
15 then gradually took a little bit more. And I believe on
16 Thursday night, they took the vast majority of it. But when
17 they take it, remember, it comes back to the clearing bank, and
18 then they take a full new forty-five, fifty, sixty-five,
19 seventy each day, depending on the amount that has to be
20 REPO'd.

21 Q. And the numbers that you're using, are those numbers that
22 you recall during the week of September 15th as being numbers
23 that were associated with the REPO transactions?

24 A. Well, the REPO transaction amount that I recall is 50.6
25 billion dollars.

1 Q. 50.6 billion dollars?

2 A. That's correct.

3 Q. That was the amount of the Fed REPO that Barclays
4 eventually took over; is that correct?

5 A. Yeah, subject to the description I just gave, yes.

6 Q. Understood. And in a standard REPO contract -- withdrawn.

7 A REPO is essentially a financing vehicle; is it not, sir?

8 A. It's structured as a -- it's a financing structured as a
9 sale. So the one party sells the assets to the other party,
10 the other party agrees to buy them back.

11 Q. And the party, the buyer agrees to sell them back, as
12 well, correct?

13 A. That's correct.

14 Q. And generally -- it's generally expected, is it not, that
15 the selling party will, in fact, buy the collateral back at the
16 price that it was sold for, plus some mark-up that's intended
17 to reflect the financing charge, correct?

18 A. Generally that's the case, yes.

19 Q. Okay. And was that the case with respect to this REPO
20 arrangement?

21 A. The economics of the margin, I don't know.

22 Q. Okay. In a standard REPO contract, sir, does the lender
23 extend less cash than the amount of the collateral?

24 A. The party buying, which you've denominated as the lender,
25 has a cushion between what they buy and what they extend. So

1 in this case, 45 billion extended by the Fed and subsequently
2 45 billion dollars extended by Barclays to purchase those
3 assets, the assets would have a nominal number of value greater
4 than the amount extended.

5 Q. Okay. And so it was the -- I used the word lender in my
6 last question, and you appropriately pointed out that that
7 use of the word is somewhat imprecise. But in relation to a
8 description of a REPO as a financing transaction, the REPO --
9 the buyer of the assets is essentially in the position of a
10 lender, correct?

11 A. That's correct.

12 Q. Okay. And that was the case with respect to the Fed REPO,
13 the REPO that the Fed had stepped into during the week of
14 September 15th, was it not?

15 A. Yes.

16 Q. And it was the case with respect to the REPO at the time
17 that Barclays gradually stepped into the Fed's shoes as well,
18 correct?

19 A. That's correct.

20 Q. And the amount -- I think you said 50.6, was that the
21 collateral that was posted for the REPO by Lehman?

22 A. That's my recollection, yes.

23 Q. Very good. Moving to the morning -- through the week of
24 September 15th to the morning of September 19th. Was the --
25 were you aware that the sale hearing had been scheduled for the

1 afternoon of September 19th?

2 A. I believe it was actually scheduled for the morning of
3 September 19th originally, and it was moved.

4 Q. It was ultimately postponed to the afternoon, was it not?

5 A. That's correct.

6 Q. And were you aware of the scheduling of that hearing at
7 all relevant times during the day on the 19th of September?

8 A. I was, yes.

9 Q. And in terms of your role in the sale transaction, were
10 you personally involved in the events and the negotiations
11 leading up to the sale transaction?

12 A. Certainly certain of the events, yes.

13 Q. Okay. And as a result of what -- well, why don't you just
14 describe generally, characterize your role with respect to the
15 transaction, if you would, sir?

16 A. Well, we can start back, but it was a very hectic week.
17 We'd obviously, and I mean we, me personally, with a few of my
18 colleagues spent the weekend at the Fed trying to negotiate the
19 sale of the entirety of Lehman to Barclays. When that
20 transaction was turned down by various regulatory agencies
21 related to a number of issues, which I think had become public,
22 we looked for a different alternative transaction. We also
23 looked for a way to finance the firm.

24 The Fed had made clear to us that they wanted us to file,
25 the Fed and the SEC, to file for bankruptcy on Sunday night,

1 and we looked for an alternative transaction. And I was
2 involved in both helping come up with the idea of an
3 alternative transaction to Barclays, as well as trying to help
4 keep the firm running during that week. And I think what is
5 forgotten is that the -- it was a very difficult time.
6 Employees were stressed beyond belief. The organization was
7 stretched. The filing in Europe really upset a lot of
8 counterparties' accounts, brokerage clients, so that really
9 hurt the sales organization. It was a very, very difficult
10 hectic week, and so I was involved in a number of different
11 aspects of trying to help consummate that sale to keep the
12 business together.

13 They included working on the DIP financing, which was
14 required to help fund Lehman through the sale period, which we
15 thought could run as much as ten days, and without the
16 financing, we wouldn't have been able to do it. As well as
17 certain aspects related to the asset purchase agreement and
18 closing the transaction with Barclays.

19 Q. And were you aware that there was a proposed transaction
20 that was submitted to the Court during the week of September
21 15th?

22 A. I was here, yes.

23 Q. Okay. And were you generally familiar with the terms of
24 the deal that had been presented to the Court and the asset
25 purchase agreement that was filed with the Court?

1 A. Generally, yes.

2 Q. Okay.

3 A. Now, one point to keep in mind again, is that we
4 compartmentalized a lot of the things that had to be done. And
5 if we had not been able to divide those tasks, we probably
6 wouldn't have gotten it done. So my knowledge, working
7 knowledge, is of the deal generally, and then there are the
8 things that I worked on specifically.

9 Q. And did you have an understanding by Friday morning, the
10 19th, that the deal had changed somewhat from the deal that had
11 been filed with the Court earlier in the week?

12 A. Yes, I did.

13 Q. And did you have an understanding generally of the terms
14 of the deal that were under discussion with Barclays by Friday
15 morning?

16 A. I did, yes.

17 Q. And it's fair to say, is it not, that the deal that was
18 under discussion with Barclays on -- by Friday morning was a
19 different deal than the deal that had been previously presented
20 to the Court, correct?

21 A. Certain of the aspects were very different, with respect
22 to the securities that would trade. The basic of the set-up of
23 the deal was identical. Barclays was going to buy the U.S.
24 franchise for roughly 250 million dollars. They were going to
25 assume certain liabilities with respect to that franchise.

1 They were going to buy the building for about a billion
2 dollars, and they were going to buy some data centers for, I
3 think, roughly 200 million dollars. So that framework was the
4 same. The question was what assets would be available, and
5 what assets would actually transfer to Barclays that would help
6 run the business, and whether Barclays would buy those assets,
7 or something else would happen to them.

8 Q. Let me ask a slightly more specific question, and that
9 information was helpful, but the original deal, sir, did not
10 involve the REPO transaction, did it?

11 A. I don't recollect whether the original deal involved the
12 REPO transaction. It was clear on Sunday night and into
13 Monday, and I believe the asset purchase agreement or the order
14 reflected it. I apologize, I don't recollect, that the Fed
15 wanted out the REPO, and they were not going to wait around.
16 So there was a lot of pressure from the Fed financing Lehman
17 Brothers.

18 We had offered, I specifically had offered the Fed and the
19 SEC the opportunity to wind Lehman Brothers down over a longer
20 period of time. We could've looked for a different buyer, we
21 could've liquidated the securities, we would've kept all the
22 derivatives positions in place. They specifically turned that
23 down. When they were in the Fed REPO position, which is
24 funding approximately 50 plus billion dollars of Lehman
25 Brothers' assets, they were not comfortable, and I believe they

1 made that well known.

2 So I don't -- I just don't recollect, when you say it
3 wasn't part of the deal, I think from my perspective, getting
4 the Fed out of their REPO was pretty important, and certainly
5 from the noise we heard from the Fed, it was important from
6 them as well.

7 Q. By Friday morning, was part of the deal that was under
8 discussion to essentially turn the REPO into an asset sale?

9 A. Yes.

10 Q. And that's -- the concept of turning the REPO into an
11 asset sale was a different concept than the concept that had
12 been presented in the APA earlier in the week; was it not, sir?

13 A. I don't know how the payment mechanism worked in the APA.

14 Q. So you don't know one way or the other?

15 A. I just don't recollect right now, no.

16 Q. Okay. Was the -- on the morning of the 19th, was the
17 value of the REPO collateral that Barclays had received a topic
18 that was under discussion between Barclays and Lehman?

19 A. Yes, it was.

20 Q. And were you involved in those discussions?

21 A. I was.

22 Q. And I think that you mentioned earlier the 50.6 billion
23 number, and it's true, is it not, that based upon Lehman's
24 marks, the aggregate value of the collateral that went to
25 Barclays was about 50 billion dollars, correct?

1 A. Lehman's marks for the Fed facility were 50.6. I don't
2 recollect exactly what the -- when the securities went to
3 Barclays, exactly what they were off the top my head, or
4 whether that aggregated exactly 50.6, but it's in that
5 neighborhood.

6 Q. Okay. And certainly, you are familiar that the marks for
7 the collateral that the Fed had received earlier in the week,
8 they were marked at about 50.6 billion, correct?

9 A. That's correct.

10 Q. All right. And were you familiar with the process that
11 Lehman used to mark securities as of the time period September
12 2008?

13 A. Generally, yes.

14 Q. And you had confidence in that process; did you not, sir?

15 A. I did.

16 Q. And the Lehman team, including you, believed that the
17 marks that Lehman had on its securities were accurate marks,
18 correct?

19 A. Well, I had confidence in the marks that I was responsible
20 for. And during that week, it was very difficult to keep
21 traders in their seats and to mark liquid assets, let alone
22 illiquid assets. So I don't believe that from my own personal
23 experience, I have good confidence in the process that Lehman
24 used, generally. In that week, it was difficult.

25 Q. But generally, you did have confidence in the process,

1 including in that week; did you not, sir?

2 A. I think I just testified that, generally, I had confidence
3 in the process and during that week, it was very difficult. So
4 there was questions about what was happening that week. My own
5 positions, I felt pretty good about.

6 Q. Well, let me direct your attention, if I could, sir, to
7 page 253 of your deposition; actually, 252 and 253. That's the
8 end of your -- the last thing in your binder. And it'll be --
9 it should be after the -- it's your second deposition, page
10 253. The numbers ran sequentially.

11 A. Uh-huh.

12 Q. And focusing on the bottom of page 252 and to the top of
13 page 253, you were asked:

14 "Q. But you were familiar generally with this process
15 that Lehman was using to mark your liquid securities, right?

16 "A. Yes.

17 "Q. And you had confidence in it at the time?"

18 And your answer was yes. That was your testimony,
19 correct, sir?

20 A. That's exactly what I just said.

21 Q. And is it your -- are you testifying here that that
22 deposition testimony was limited to the marks that you were
23 personally involved in or did it extend to the overall
24 portfolio?

25 A. I think the context of this -- these statements are

1 important. I'm being asked about modeling, was I familiar with
2 how Lehman modeled illiquid securities. The answer is yes.
3 You're asking me now -- you're trying to take this and say on
4 that date was I sure that they were up to date. For my own
5 securities that I was responsible for, that I signed Sarbanes
6 Oxley for, I was comfortable. But in that market it was still
7 difficult to be very accurate, particularly with respect to
8 illiquid securities.

9 And I think the testimony I gave earlier is identical to
10 what I gave here. You've just taken I think part of it out of
11 context, and there should be other places in the deposition
12 where the very question you asked me I was asked and I answered
13 in the very same way.

14 Q. And as a general proposition in its dealings with Barclays
15 on -- in the week of September 15th, it was Lehman's position
16 that the marks on the Fed collateral were accurate marks,
17 correct?

18 A. Yes.

19 Q. And that the value of the securities was consistent with
20 the marks on the securities, correct?

21 A. That was our position, yes.

22 Q. Okay. And the result of that would be that the -- there
23 would be a difference between the marks on the securities and
24 the amount that had been advanced under the REPO financing
25 transaction, correct?

1 A. That's correct.

2 Q. And that difference was approximately five billion
3 dollars, wasn't it, sir?

4 A. That's correct.

5 Q. All right. Taking you to Friday morning, we started to
6 mention some of the discussions with Barclays. Is it fair to
7 say that there were some issues that had arisen with respect to
8 the transaction by Friday morning that, perhaps, called the
9 transaction into question?

10 A. That is fair to say. Yes.

11 Q. And were you involved in discussions with Barclays
12 concerning those issues?

13 A. I was.

14 Q. And did the issues involve, among other things, a
15 difference of opinion, with respect to the value of the
16 collateral that Barclays had received when it stepped into the
17 shoes of the Fed under the REPO transaction?

18 A. They did. What happened was on Thursday night, Barclays
19 began to take in the REPO. And during that night, they were
20 purchasing around 50 billion dollars, face amount roughly, of
21 assets in -- marked on Lehman's books. And they were advancing
22 around 45 billion dollars of cash.

23 Their team in London called and checked certain items that
24 were getting delivered to them by JPMorgan. Some of those
25 items they questioned the value of, and one of them in

1 particular, they called me. And that led to some concern about
2 the value of that asset, because it didn't -- it wasn't an
3 asset that was marked, to my knowledge, at any regular
4 interval.

5 In addition, on Friday morning, when they looked at what
6 they had, there were a number of other assets in the REPO that
7 they had questions about the marks. And so they challenged
8 Lehman's marks with respect to those assets.

9 Q. And were they, as part -- oh, I'm sorry. Were you
10 finished?

11 A. Yes, I am.

12 Q. I thought I cut you off, sorry. Were they threatening not
13 to close on the transaction as a result of these issues?

14 A. They were, yes.

15 Q. And were you involved in various discussions with Barclays
16 concerning the issues that they were raising?

17 A. I was, yes.

18 Q. Who from Lehman other than yourself were involved in those
19 discussions?

20 A. Alex Kirk.

21 Q. Anyone else?

22 A. Bart McDade.

23 Q. Anyone besides the three of you?

24 A. I believe Mark Shapiro, as well.

25 Q. And who from Barclays do you recall being involved?

1 A. Mike Keegan, Rich Ricci.

2 Q. Any others from Barclays that you recall being involved?

3 A. I believe, at least briefly, Mr. Diamond.

4 Q. And at some point on Friday morning, did you assemble a
5 group of Lehman traders and give them an assignment?

6 A. I did, yes.

7 Q. And do you recall the approximate time at which you did
8 that?

9 A. No, I don't.

10 Q. Was it -- can you approximate it at all, whether it was
11 first thing in the morning, mid-morning, late morning?

12 A. The time runs completely together, because I don't believe
13 we went home on Thursday night. The calls that I got from
14 London with respect to some of the assets that were trying to
15 get put into the REPO were middle of the night calls. We
16 scrambled to try to figure out what those assets were.

17 By early Friday morning, I had met with Mr. Kirk and
18 discussed some of the issues that Barclays had, particularly
19 Mike Keegan. I believe, at that point, the hearing may not yet
20 have even been moved. And we knew we had to prepare Mr.
21 Ridings for testimony.

22 So I met with Mr. Ridings, had other conversations
23 involved with their dispute with respect to -- Barclays'
24 dispute with respect to the amount or value of certain of the
25 assets. And then in connection with preparing Mr. Ridings and

1 thinking about the value dispute, I called together a bunch of
2 traders, so I don't have a real accurate reflection of the time
3 as it all ran together.

4 Q. And was the -- did you, in fact, call them together as
5 part of the process of gathering information for Mr. Ridings'
6 testimony?

7 A. Yes, that was the primary purpose.

8 Q. Okay. Where did this -- the meeting of the traders take
9 place?

10 A. I believe it was on the third floor at Lehman Brothers in
11 one of the conference rooms.

12 Q. And do you have any recollection about how the meeting was
13 set up? Was it set up in advance, was it a spur of the moment
14 kind of a thing?

15 A. It was very much spur of the moment. I sat down with Mr.
16 Ridings. I don't recall whether there was someone from Weil
17 Gotschal there or not to review Mr. Ridings' testimony and
18 review the changes to the deal, to discuss the securities, as
19 well as the other assets that were being transferred.

20 I then quickly assembled a number of traders to review
21 categories of positions. I don't recall how many traders, but
22 it was at least ten or fifteen, probably more like twenty, and
23 was doing it with one of the guys who ran hedge fund sales.

24 Q. And you mentioned the meeting that you had with Mr.
25 Ridings. Did Mr. Ridings give you some indication at that

1 meeting about what information he thought he needed for
2 purposes of the hearing?

3 A. I don't recollect a specific discussion. This was an area
4 of law that I'm generally familiar with. And so I was prepared
5 to work with Mr. Ridings to help him get the information he
6 needed for his testimony.

7 Q. And did you have some understanding then based upon your
8 familiarity about the kind of information that Mr. Ridings
9 needed, even though he didn't tell you?

10 A. Yes, I did.

11 Q. And what was your --

12 A. Well, I don't -- excuse me. I don't know that he didn't
13 tell me. I just don't have a specific recollection of the
14 discussion.

15 Q. What was your understanding of the kind of information
16 that Mr. Ridings needed for purposes of his testimony?

17 A. I think he was going to testify that the sale was fair and
18 reasonable. And in order to do that, he had to consider what
19 the alternative sales of Lehman Brothers would look like.

20 Q. And did that include a liquidation value of the assets
21 under consideration?

22 A. It included a sale of all of the securities and all of the
23 other assets and what they would have looked like. We didn't
24 do a liquidation value in the term, the way the term is
25 normally used in bankruptcy court, where you have a liquidation

1 analysis that goes along with a disclosure statement. We
2 really tried to look at, you know, what the securities were
3 worth versus what our marks were.

4 Q. And so it's your testimony that the work that you were
5 doing was not intended to come up with a liquidation bid for
6 the collateral?

7 A. No, it was a liquidation bid. It was to sell the assets,
8 you know, over a relatively swift period of time. I didn't set
9 up parameters and say we're putting it on the auction block
10 tomorrow, but to sell securities over a couple of days to see
11 what you could get out of them in the context of the business.

12 Q. And that was the instructions that you gave, in fact, to
13 the traders were to -- well, withdrawn.

14 Have you -- we're going to get into the specifics of the
15 meeting in a moment. But in describing the meeting that you
16 had with Mr. Ridings, have you fully described the impetus for
17 the meeting that you assembled of the Lehman traders?

18 A. I'm not quite sure what your question is.

19 Q. Well, you talked about Mr. Ridings and his need to
20 testify. And after the -- after you had the meeting with Mr.
21 Ridings, you went and called this meeting of traders, correct?

22 A. Yes.

23 Q. And what I was trying to ask you, not very artfully, was
24 whether there were other meetings in which you had participated
25 that also contributed to your decision to call this meeting of

1 the traders.

2 A. No. It was coming out of my meeting with Barry.

3 Q. Okay. So the meeting with Barry was the, I think you said
4 was the primary impetus of --

5 A. Yes.

6 Q. -- the calling of the meeting of the traders?

7 A. Yes.

8 Q. Okay. And you mentioned Mr. Ricci of Barclays. Was he
9 present at Lehman's facility on the morning of the 19th?

10 A. He was at the facility, he wasn't at that meeting.

11 Q. And had you met with him earlier in the morning prior to
12 calling the meeting of the traders?

13 A. I don't think I met with Mr. Ricci that -- before that
14 meeting, and I was only in one meeting with Mr. Ricci around
15 that time.

16 Q. All right. How about Mr. Keegan, was he -- did you meet
17 with him shortly in advance of calling the meeting --

18 A. No.

19 Q. -- of the traders?

20 A. No. This was a meeting with our financial advisor, our
21 expert, just Lehman people. And there was nobody from
22 Barclays. This was on the third floor. The people from
23 Barclays were on the 31st floor. This was on the trading
24 floors, bringing guys in and telling them what we want them to
25 do. And it wasn't a formal meeting as we're sitting here in

1 this court. It was guys standing up and saying this is what we
2 need and we need it fast.

3 Q. And was it you who did the selection of the traders that
4 you assembled for purposes of this task?

5 A. I don't believe I actually picked the individual traders.
6 I think that was Peter Hornick.

7 Q. I'm sorry?

8 A. Peter Hornick.

9 Q. Peter Hornick picked the traders. And did Mr. Hornick
10 notify the traders that the meeting was going to occur?

11 A. Literally ran around the floor and grabbed guys off their
12 desk and said, come with me.

13 Q. And is it fair to say that the purpose of the gathering of
14 the traders was to have the traders provide values for certain
15 assets?

16 A. It was, yes.

17 Q. And were those assets the assets that constituted the REPO
18 collateral?

19 A. They really weren't, because I didn't have the full deck
20 of what was in the REPO collateral. They were categories of
21 assets that were in the Fed collateral. So they went from
22 things like agency debentures, to pass through certificates, to
23 CMO equity even. So all kinds of different securities that
24 otherwise would have made their way into the Fed REPO.

25 Q. So was the base that you were working with then the --

1 what you understood to be the Fed collateral, the Fed REPO
2 collateral?

3 A. Didn't hand out a sheet to anybody. We simply asked them
4 to look at those categories of assets that we believed were
5 involved in the trade and get a sense of where the market had
6 moved and how they would do if they were trying to sell those
7 assets, whether they -- if the market was very liquid, they
8 could sell it this afternoon, if it wasn't so liquid, it could
9 take a couple days. But to move both the type of asset and the
10 size position that they had through the market.

11 Q. And did you give the traders a specific assignment?

12 A. That was the assignment I gave them.

13 Q. Okay. And it was you that gave them the instruction,
14 correct, not anybody else?

15 A. That's correct.

16 Q. You personally gave the instruction to the traders?

17 A. I'm sure Peter amplified it, but I gave it in at least the
18 first instance.

19 Q. And it's true, is it not, that the assignment that you
20 gave to the traders was to determine what the appropriate
21 liquidation bid would be with respect to the collateral?

22 A. To their various securities. But liquidation bid the way
23 you're using it, is just selling the securities over a short
24 period of time. You're not looking to sell them all to one
25 buyer, you'll get killed. In the context of your market and

1 the securities that you trade, how much of a hit to your mark,
2 how much of an adjustment to your marks would you realize if
3 you had to sell it in the market during that week.

4 Q. And the term liquidation bid with respect to the
5 collateral was, in fact, part of the instructions that you gave
6 to the Lehman traders; was it not, sir?

7 A. I don't really know.

8 Q. All right. Let me --

9 A. I may well have used that term. I don't know.

10 Q. Okay. Let me direct your attention, if I could, to page
11 257 of your deposition. And there's kind of a long question
12 and answer there. Why don't you take a moment to review the
13 question that starts on line 12 of page 257 and the answer that
14 runs over to the end of page 258.

15 A. Just so I'm in the right place, your question is, "So
16 what's the next thing that you folks do, that you do
17 personally?"

18 Q. That's correct, sir, thank you.

19 (Pause)

20 A. Okay.

21 Q. And without -- I don't want to take the -- burden the
22 court reporter by reading the entire answer into the record,
23 but it is true, is it not, sir, that you were, in this answer,
24 describing the meeting that you had with the traders and the
25 instructions that you gave to them?

1 A. That's correct.

2 Q. And your instructions included to figure out what would be
3 the appropriate liquidation bid with respect to this
4 collateral, correct?

5 A. Again, the term here, I'm not quoting from myself, you
6 know, a year-and-a-half ago. I'm perfectly fine with that bid,
7 and you seemed to be focused -- that term, you seem to be
8 focused on it. I'll stand by this testimony.

9 Q. You're not quibbling with the fact that you used --

10 A. Not at all.

11 Q. -- the word liquidation bid in your instructions to the
12 traders, are you, sir?

13 A. I'm quibbling -- I'm not quibbling with the fact that I
14 used the term liquidation bid in my testimony. I said I may
15 well have used it in my instruction to the trader. It doesn't
16 have a significance that I'm aware of that would change
17 anyone's view from the more detailed description that I give
18 below.

19 Q. And you also instructed the traders that the value that
20 you wanted or the values that you wanted them to come up with
21 would be the values that would be attainable if 50 billion
22 dollars of securities hit the market in rapid succession,
23 correct?

24 A. That's what I was looking for. I didn't tell them what
25 the gross positions were. They knew what their own positions

1 were. So each trader knows what his market can bear and what
2 he can handle, and that's what we asked them to determine.
3 They didn't -- each trader didn't have 50 billion dollars in
4 securities. From those categories of assets, the aggregate is
5 50 billion. Some of them were just a couple hundred million or
6 50 million, some of them were multiple billion.

7 Q. So, sir, is it your testimony as you sit here today then,
8 that your description of the assignment to the traders did not
9 include a hypothesis or a parameter that you wanted them to
10 come up with the values that would be -- that what would happen
11 if 50 billion dollars of securities hit the market in rapid
12 succession? Is that your testimony?

13 A. I don't recall telling them about 50 billion dollars.
14 Each trader was told to look at their own positions and look to
15 how those positions would move.

16 Q. And is it your --

17 A. And I'm not sure that would make a difference, but that's
18 what I recollect telling them.

19 Q. Okay. So is it your testimony now then, sir, that the
20 traders were not advised that the collateral that was at issue
21 was the 50 billion dollars of the Fed REPO collateral?

22 A. I think that's similar to my testimony before, yes.

23 Q. So you're -- you deny that that's what the traders were
24 told?

25 A. I don't recollect telling anybody, and there would have

1 been no need to tell them about the aggregate. Barry certainly
2 knew about the aggregate. But each trader had to figure out
3 their own positions and knew what they were.

4 Q. Well, let me direct your attention, if I could, to page
5 259 of your transcript, sir.

6 A. Uh-huh.

7 Q. And in particular, to line 5. And there's a question --
8 well, first of all, there's a reference to thirty different
9 people on line 4. Do you see that?

10 A. Yes.

11 Q. Does that refresh your recollection about the number of
12 traders that were involved in the exercise that we're
13 discussing?

14 A. I don't think that -- I don't know that they were all
15 senior traders. There were at least that many people in the
16 room.

17 Q. Okay. And --

18 A. Now I said at least. That might be a little bit of a
19 hyperbole. It was more than fifteen for sure.

20 Q. Okay. So you don't know if it was -- thirty may have been
21 a hyperbole. Is that what you're saying now?

22 A. Yes, I don't know for sure.

23 Q. Okay. So directing your attention, sir, to the question
24 that begins on line 5.

25 "Q. Was there -- did you speak to all thirty or did you

1 have a point of contact?

2 "A. Got the senior traders all in a room and said, here's
3 what we need, here's the category of assets that you're
4 responsible for, we're going to come back and circulate, and
5 come back to each of you, and we need a view as to where, what
6 kind of discount you would be forced to take if you were to
7 liquidate these assets in a relatively short period of time."

8 Is that -- that was your testimony, was it not, sir?

9 A. Yes, it was.

10 Q. And is that consistent with the instruction that you gave
11 to the traders?

12 A. Yes, it was.

13 Q. And you told the traders that you wanted a liquidation bid
14 for the assets, correct?

15 A. Again, we can replot this term again. I don't know if I
16 used the term liquidation bid. In our parlance, on Wall
17 Street, when you sell something, you're liquidating it. So how
18 much would it take to liquidate that position, to sell that
19 position.

20 Again, in bankruptcy, liquidation sometimes has a
21 different connotation. For example, a Chapter 7 proceeding or
22 a TIPIC proceeding, we're telling them to -- on their desk, go
23 out and liquidate securities.

24 Q. So your -- is it your testimony then that the liquidation
25 bids that you were seeking were coextensive with the market

1 value of the assets? Is that your testimony, sir?

2 A. The liquidation bids I was receiving was coextensive with
3 the market values of those assets, yes.

4 Q. Let me direct --

5 A. We asked them -- yes. We asked them to sell the assets in
6 the market. What would it take to sell your position, to
7 liquidate your position in the context of the market? If you
8 could do it in an hour, do it in an hour. If it takes two
9 days, couple of days. Come back to us and tell us how you
10 would liquidate those positions over that period of time. It
11 does not connote a bid wanted in comp, which is a term of art
12 where a dealer goes out and says I have five billion, everybody
13 come in with your best bid.

14 It connotes selling them within the context of the market.
15 And understanding the markets at that time, they were very
16 distressed market. So I think the market value and the
17 liquidation value were probably pretty darn close using your
18 terms.

19 Q. So just so that I understand your testimony here. Your
20 testimony is essentially that any disposition of the assets
21 would have reflected a liquidation bid? Is that your
22 testimony, sir?

23 A. Any disposition of the assets? I think it really depends.
24 If you're -- my term liquidation bid is selling your assets.
25 If you're -- if you want to bid to get out of everything in

1 large size, if I want to sell a million treasuries even in that
2 week, that probably wouldn't have been very difficult. If I
3 wanted to sell eleven billion of them, that might have been a
4 little more difficult.

5 Q. Well, sir, let me direct your attention, if I could, to
6 pay 263 of your -- of the transcript, and in particular, to the
7 question that begins on line 6. Are you with me?

8 A. Yes.

9 Q. Question:

10 "Q. And to the best of your recollection, what
11 exactly were the words that you said? I understand
12 the time?

13 "A. I have no specific recollection of the
14 words. I can tell you what generally was requested,
15 which is what I already said.

16 "Q. Okay.

17 "A. Which was, we went you to provide us with a
18 view as to the liquidation bid for these assets. If
19 you had to sell the full size in a short period of
20 time, what kind of discount would you need to give the
21 buyers in order to move that assets."

22 A. "That full size."

23 Q. "To move that full size," I'm sorry.

24 A. Yes.

25 Q. And that was the instruction that you gave them?

1 A. That was as close as I could remember. I think I said I
2 didn't recollect the exact words.

3 Q. And it's your testimony, as you sit here today, that in
4 asking the traders to develop a liquidation bid for the full
5 size of the assets in a short period of time, you are asking
6 them to basically give you market value. Is that your
7 testimony, sir?

8 A. No. I said the full size of their positions. All right.
9 Not -- and each asset could be different.

10 Q. Well --

11 A. Then if a -- there was a very small size in a particular
12 asset, it would move very easily. If it was a large size, and
13 it would depend on the asset class, it could be much more
14 difficult.

15 Q. And you mentioned several times Mr. Ridings and the
16 testimony that he was about to give. And you're trained as a
17 bankruptcy lawyer; are you not, sir?

18 A. I am, yes.

19 Q. And you understood that one of the things that Mr. Ridings
20 might be required to do, in defending the sale transaction, is
21 to testify that the asset values that were being achieved
22 through the sale, were better than what would be achieved in a
23 liquidation, correct?

24 A. The entire sale of Lehman Brothers, that's correct.

25 Q. And that was the context for the meeting that you called

1 with the traders, at which you gave the traders the
2 instructions to come up with the liquidation bid; was it not,
3 sir?

4 A. That's correct.

5 Q. And the instructions -- and the people you were meeting
6 with were not bankruptcy lawyers, correct?

7 A. Not to my knowledge.

8 Q. Okay. But what you were asking them for was the kind of
9 information that you knew that Mr. Ridings might be required to
10 present to the Court, to contrast the deal that was on the
11 table to liquidation values? You knew that; did you not, sir?

12 A. I did, yes.

13 Q. And you gave instructions to the traders that were
14 consistent with developing the kind of information that you
15 knew that Mr. Ridings might need for purposes of his testimony,
16 correct?

17 A. It was in the context of what he might need. What you
18 have to remember is that we didn't put together a liquidation
19 analysis, as I said earlier, that you'd see in a plan of
20 reorganization. We're trying to figure out, with the
21 organization in place, how could they sell these securities and
22 what would be the level they got. And also, the context that
23 we're going through, this discussion that we're having now,
24 exceeds the time of this meeting by ten times.

25 Q. Well, let me ask you this, sir. When you met with the

1 Barclays' lawyers over the last couple days, did you talk about
2 the term liquidation bid?

3 A. Certainly did.

4 Q. And was that one of the issues in your deposition that you
5 focused on in the preparation sessions that you had with them
6 over the last couple of days?

7 A. I told them very much what I just told you.

8 Q. Okay. And it's true, is it not, that the impetus for your
9 meeting with the traders, was a desire to have from the
10 traders, the kind of information that Mr. Ridings would need
11 for purposes of his testimony? That's the -- that was the
12 purpose, correct?

13 A. That's correct.

14 Q. And you gave them -- it's fair to assume, is it not, that
15 you gave the traders instructions that were consistent with
16 developing that information, right?

17 A. That's correct.

18 Q. The traders would not have known without you telling them,
19 would they, sir, what kind of information Mr. Ridings was
20 likely to need for purposes of his testimony, correct?

21 A. I don't believe we gave them the context of what Mr.
22 Ridings was doing or anything to do with what might be needed
23 in court. We just asked them for those values to help prepare
24 Barry, yes.

25 Q. I understand that, sir. But you gave the traders -- you

1 told -- whatever you told the traders was intended to give you
2 information that you could then give to Mr. Ridings for
3 purposes of his testimony, correct?

4 A. That's right.

5 Q. And what you knew about his testimony was that he might be
6 in a position where he needed to compare and contrast the price
7 that was being paid pursuant to the deal to liquidation prices,
8 correct?

9 A. I did, yes.

10 Q. Okay. And so, when you instructed the traders, you gave
11 them instructions that were consistent with that potential data
12 need, correct?

13 A. It's a little bit different, because I didn't have a
14 context to just do a complete liquidation as you'd think of a
15 Chapter 7 liquidation, which is a normal bankruptcy context.
16 All I had was the traders and what their marks were versus what
17 they could sell in -- over some period of time. If you shut
18 the doors and you had Gordon Brothers come in and sell the
19 securities, I had no way to estimate what that value would be.

20 Q. Well, you had their marks, correct?

21 A. I had their marks, yes.

22 Q. And you understood that the marks were intended to reflect
23 market prices, correct?

24 A. I testified before, generally, that's the case. We were
25 in a week that no one that I've ever experienced -- certainly a

1 week that I've never experienced in the securities market, and
2 I don't think anyone else had. And it wasn't just the markets.
3 It was the challenges of the organization. So there were
4 concerns about those marks.

5 Q. Well, we'll talk about those concerns in a moment. But
6 for present purposes, you knew that while there might be debate
7 about the marks, the marks were intended to reflect the prices
8 that the assets were worth if they were sold in the market to a
9 willing buyer and by a willing seller, correct?

10 A. That's correct.

11 Q. That was the entire -- that's the entire purpose behind
12 marking to market, correct?

13 A. I don't think that's the entire purpose, but that is a
14 purpose, yes.

15 Q. Well, it's the measure of value that is intended to be
16 used in marking to market; is it not, sir?

17 A. That's correct.

18 Q. And the -- and there were a set of marks that were in
19 existence at the time that you called this meeting, right?

20 A. Yes.

21 Q. And what you were intending to do was to come up with some
22 alternative values that represented what, at your least your
23 deposition testimony indicated, would be a liquidation bid if
24 you were to sell the full size of the position in relatively
25 short order, correct?

1 A. That's correct. And that happens, by the way, all the
2 time in the securities business. You can have a security
3 marked at ninety-five and go to sell it in the market, and it
4 looks like it's ninety-five, but today you can only get ninety.

5 Q. And by the way, sir, did anyone at Barclays tell you that
6 it was their intention to sell the full 50 billion dollars'
7 worth of -- or whatever billion dollars' worth of assets,
8 constituted the collateral very quickly and all at once?

9 A. No. Barclays had nothing to do with this discussion.

10 Q. Okay. So Barclays did not tell you that they intended --

11 A. No.

12 Q. -- to do some sort of a quick liquidation, a fast
13 liquidation of these assets, correct?

14 A. They did not, no.

15 Q. And you knew at the time that you were undertaking this
16 effort with your traders that Barclays would not do that,
17 correct?

18 A. I didn't know exactly what Barclays would do. I assumed
19 that the only reason they were buying these securities was to
20 use them in the business. Otherwise, they would have been just
21 as well off and perhaps better off if they had never advanced
22 45 billion dollars against these securities and use that money
23 to capitalize the business.

24 Q. Well, let me direct your attention, sir, to page 266 of
25 your deposition and, in particular, to the question starting at

1 line 10. Are you there?

2 A. Yes, I am.

3 Q. Question:

4 "Q. Did anybody at Barclays say that they
5 intended to sell the securities very quickly, very
6 soon, and all at once?

7 "A. Not that I recall.

8 "Q. And do you know one way or another whether
9 that's what Barclays actually did with the securities?

10 "A. I don't know. Actually, I do know.

11 "Q. And?

12 "A. They wouldn't do that."

13 That was your testimony, correct?

14 A. That's correct.

15 Q. And you understood, on the morning of Friday, September
16 19th of 2008, that Barclays would not be going out into the
17 market and selling these securities en masse, all at once, very
18 quickly, correct?

19 A. They could have lost money. They advanced 45 billion
20 dollars against them. They would have been insane. They were
21 -- they had no hedge. Nobody would have done that, to just
22 sell them the next day. You'd lose money.

23 Q. And so, you knew that they wouldn't do that, correct?

24 A. Yes.

25 Q. It was not their --

1 A. And, in fact, they didn't do it.

2 Q. It was not their intention to sell the assets all at once
3 and very quickly, correct?

4 A. I never had any discussions with them, but no dealer that
5 I know would ever have done that.

6 Q. And, sir, isn't it fair to say that the values that you
7 were asking your traders to come up with were fire sale prices?

8 A. I never used the term fire sale.

9 Q. Well, you understand what a fire sale is in the context of
10 a liquidation of securities; do you not, sir?

11 A. A fire sale is when you have a fire at a store and then
12 you sell everything, because you can't keep the store open.

13 Q. And --

14 A. I certainly did not ask them to go treat it as if there
15 were -- we had a fire at Lehman Brothers and you had to sell
16 them all tomorrow.

17 Q. And, sir, let me direct your attention if I could to --
18 well, let me ask you another question first.

19 You said fire sale is when you have a fire at the store
20 and you sell the inventory. It's also used as an analogy in
21 other contexts; is it not, sir?

22 A. It's an idiom that's frequently used in the language, yes.

23 Q. And it's used in connection with dispositions of
24 securities; is it not, sir?

25 A. Not usually.

1 Q. You've understood it to be used in that context though,
2 haven't you, sir?

3 A. If you told me that a hedge fund was having a fire sale, I
4 would assume that that meant that they were out of business.

5 Q. Well, sir, let me direct your attention, if I could, to
6 page 267 of your deposition.

7 A. Uh-huh.

8 Q. And in particular, to the question that begins at line 4.
9 Question -- are you there?

10 A. Yes, I am.

11 Q. "Q. I'd like to know what, if somebody says that there's
12 a fire sale relating to securities, what would they be relating
13 to?

14 "A. I think they're just using it as an idiom,
15 that there's actually no fire, and that they're not
16 selling the goods from the store, but they're mean --
17 but they mean they're selling it very quickly.

18 "Q. Would you describe the value that you were
19 trying to get an estimate of as a fire sale value?

20 "A. That might be a way to do it. I don't think
21 I did it."

22 So you didn't use the phrase fire sale, but the kinds of
23 values that you were seeking from your traders were, in fact,
24 fire sale values, correct, sir?

25 A. I really wasn't. I mean, the question is obviously

1 bringing me there. I said that might be a way to do it. It's
2 not the way I did it.

3 Q. And so your testimony is that -- well, withdrawn.

4 A. I'll stand by this testimony.

5 Q. We'll move on, sir.

6 After you gave the traders this assignment, did the
7 traders go off to carry out the assignment to your knowledge?

8 A. I believe they did, yes.

9 Q. And did you later get back some reports from the traders
10 concerning the values that they had come up with?

11 A. Very swiftly, within -- as again, time runs together, but
12 some five minutes, some two minutes, some an hour. Whereas,
13 illiquid, they might have had to think about their models.

14 Q. And --

15 A. But we did get reports, but not written formal reports.
16 These were just the same ladies and gentlemen reporting back to
17 us as to the results of their analysis.

18 Q. They left the room and scattered; did they not, sir?

19 A. They left the room and went to -- back to their desks, I
20 assume.

21 Q. And at some point after that, they came back to you,
22 either directly or indirectly, with information that was
23 responsive to the assignment that you had given them, correct?

24 A. Indirectly.

25 Q. Indirectly.

1 A. Someone else got that data for me.

2 Q. Who did that?

3 A. Peter Hornick.

4 Q. Okay. So the traders -- you're -- the -- whatever number
5 of traders were in the room, in fact, reported back to Mr.
6 Hornick?

7 A. Yes. I was running around on other items, and Mr. Hornick
8 handled receiving that data.

9 Q. And did Mr. Hornick then report back to you at some point
10 in time?

11 A. Yes.

12 Q. And did you have a -- did you sit down in a room with Mr.
13 Hornick or how did that work?

14 A. I don't recollect if we sat in a room, if we met in a
15 room, if we just met on the trading floor and got the general
16 idea of what the asset values were.

17 Q. And the reports that came back from the traders reflected,
18 did they not, the kind of discounts that your traders thought
19 would reflect liquidation values for the various securities,
20 security classes that were under consideration, correct?

21 A. Again, they came back with their values of these
22 securities and the context of that market, answering my
23 assignment. I didn't quiz them if they did it as a liquidation
24 bid, as you've described, a fire sale bid. They just came back
25 and responded here's what it would take to move these

1 securities.

2 Q. Well, you'd asked them for liquidation bids; had you not,
3 sir?

4 A. I went through that about eleven times already, but.

5 Q. And you don't have any reason to think they didn't come
6 back with exactly what you asked for, correct?

7 A. No, I don't think they did.

8 Q. All right.

9 A. I think they came back with exactly what I asked for.

10 Q. Okay. And did you make some record then of the
11 information that you received from the traders?

12 A. I don't recollect. You know, I certainly would have
13 written it down somewhere. I don't recollect making a record
14 of it.

15 Q. Well, let me direct your attention, if I could, to --

16 MR. WERDER: And, Your Honor, I'm going to move to an
17 exhibit that I have a fair number of questions about. I don't
18 know what the Court's pleasure is with respect to taking any
19 sort of a break.

20 THE COURT: We've been going for about two hours. So
21 we should take a break. How much longer do you think you're
22 going to be at this?

23 MR. WERDER: I probably have about another, let's
24 say, 25 minutes, Your Honor.

25 THE COURT: Let's take a break then. Let's break

1 until quarter of the hour.

2 (Recessed and reconvened)

3 THE COURT: Be seated, please. Please proceed.

4 MR. WERDER: Thank you, Your Honor.

5 BY MR. WERDER:

6 Q. Mr. Seery, right before the break we were just starting to
7 look at Exhibit 147, which I believe is in front of you. Do
8 you still have your binder?

9 A. I do.

10 Q. So look at the -- if you look at the tabs, you'll see the
11 second tab is labeled M-147.

12 A. Got it.

13 Q. And can you identify Exhibit M-147 as some notes that you
14 took on -- either on a standalone basis or on a copy of
15 documents?

16 A. This appears to be documents that I produced which contain
17 some of my handwritten notes, as you described, stand alone.
18 Others are on some of the documents. And it looks like some of
19 the documents and exhibits I haven't marked at all.

20 Q. And are these -- this is a set of documents that you
21 produced in the form in which it appears in Exhibit 147,
22 correct?

23 A. I believe so, yes.

24 Q. And the notes that -- the handwriting on the pages here,
25 does that reflect your handwriting? For example, on the first

1 page, is that your handwriting there?

2 A. On the first page, that is clearly my handwriting, yes.

3 Q. Okay. And then if we just flip to page 002, for example,
4 is that your handwriting also?

5 A. That's also my handwriting, yes.

6 Q. All right. And the third page?

7 A. That's my handwriting, yes.

8 Q. Okay. So we'll ask you about a couple specific pages in a
9 moment. But before I do that, are these notes that you took
10 during the course of the week of September 5th -- between
11 September 15th and September, let's say, 21st?

12 A. I believe the handwriting -- the handwritten notes were
13 all completed during -- some time during that week.

14 Q. All right. Now, sir, I'd like to direct your attention,
15 if I could, to the last page of the exhibit, one that has the
16 last two numbers are 70.

17 A. Yes.

18 Q. Are you with me on that?

19 A. I am.

20 Q. Okay. And this is a document that you made part of your
21 collection of notes during the week of the 15th, correct?

22 A. I don't understand "made part of my collection of notes."
23 Just to be precise, I had a bunch of notes when I left Lehman
24 Brothers, and these documents were included in those notes.

25 Q. And so this particular sheet of paper, and specifically,

1 the last page of Exhibit 147, that was part of the documents
2 that you had gathered up as part of your work on the sale
3 process during the week of the 15th and that you had when you
4 left Lehman, correct?

5 A. Yes.

6 Q. And the writing on the last page of Exhibit 147, that is,
7 in fact, your writing; is it not?

8 A. I believe the numbers, the 45.5 and the 1.9 BN are --

9 Q. Uh-huh.

10 A. -- my writing. I believe the cross out of a number, which
11 I believe to be 50.6 billion --

12 Q. Yes.

13 A. -- is my cross out. I'm not positive about the circling
14 of the ten percent there.

15 Q. Okay. But at least the cross out and the 45.5 and the 1.9
16 billion are -- they're indisputably your handwriting, correct?

17 A. I believe them to be my handwriting. There's probably
18 some pretty good forgers out there.

19 Q. Okay. But you don't have any reason to think that
20 somebody forged your handwriting on a document --

21 A. I don't, Counsel --

22 Q. -- that you had in your file, correct?

23 A. You asked me if it was indisputable. I don't have a
24 dispute with it.

25 Q. Okay. Very good.

1 A. Someone might.

2 Q. Okay. That's probably good enough for present purposes,
3 that you don't dispute it.

4 And I want to focus, in particular, on -- as I said, on
5 page -- the last page of the documents. And this is a sheet
6 that you saw on the morning of September 19th; is it not?

7 A. I'm sorry, 70?

8 Q. Yes.

9 A. I don't know exactly what date I saw it on.

10 Q. Well, sir, let me ask you to direct your attention to
11 pages 271 and 272 of your deposition.

12 A. I see it.

13 Q. Let me ask you before you do that, I'll ask you a few
14 other questions and then we'll -- maybe we'll eliminate the
15 need for the deposition.

16 So right now, you're not recalling specifically when you
17 saw this document. Is that your testimony?

18 A. I don't recollect specifically when I saw it. It appears
19 that I testified previously at deposition that I saw it on the
20 19th.

21 Q. Okay. And this is a document that was created for you,
22 correct?

23 A. I don't know who created it. I believe it has my input
24 from the afore-discussed traders' meeting. I did not create
25 the document and I'm not sure who did.

1 Q. All right. Well, sir, let me direct your attention to --
2 let me ask you one more specific question before directing your
3 attention to the deposition. And that is the document was --
4 it was your testimony in deposition, was it not, that the
5 document was created for you?

6 A. I don't believe that was my testimony. I don't know --

7 Q. Well, I direct --

8 A. I don't know who created it and I just don't -- it's in my
9 notes. It contains my writing. It contains what I recollect
10 to be the categories of assets that had been in the Fed
11 facility. And it contains a haircut figure that corresponds
12 with what I recollect of that meeting that I had gotten back.
13 But I don't know who created the document. I just don't know.

14 Q. All right. So direct your attention to page 271 of your
15 deposition, line 17.

16 A. Uh-huh.

17 Q. And the question is:

18 "So can you describe what is being shown here on
19 that last page, that's 70.

20 "I can.

21 "Did you create this document?

22 "A. I don't believe I created it. I don't know
23 who did this for me."

24 That was your testimony, correct?

25 A. That's my testimony, yes.

1 Q. Okay. Is it -- was this document, in fact, created for
2 you, sir?

3 A. I don't know.

4 Q. All right. It is a document that you had input on you
5 testified, correct?

6 A. I believe I did, again, because I don't know who created
7 it, it was in my notes, it has my writing. It's roughly those
8 categories. It contains what I recollect to be haircut
9 amounts, but I don't recollect specifically the creation of
10 this document.

11 Q. All right. And the document does, does it not, contain
12 the information that you -- we were previously discussing, that
13 you said you sought from the Lehman traders?

14 A. I think it does. Again, because of the specifics of your
15 question, I'm just really -- as I look at it more and more, I'm
16 not sure exactly what information or who created it, or how it
17 got in there. It does correspond with what I believe to be
18 roughly the haircuts that would have been required, which was
19 along the lines of the discussion we had before. However, I
20 did not ask the traders for haircuts. It's just the form that
21 it's set up that way.

22 Q. Well, sir, direct your attention to page 271, line 6.

23 A. Uh-huh.

24 Q. And the question was asked:

25 "And if you turn to the very last page that ends

1 in the Bates that ends in 70, does this relate to the
2 information that you received from Lehman traders?

3 "A. This does."

4 A. Again --

5 Q. That was your testimony, correct?

6 A. That was my testimony. What I would qualify that with
7 was, I think it does. I just don't know for certain.

8 Q. Well, what's the qualification, sir? At your deposition
9 in March, you testified that it related to the information that
10 you received from the traders, now you have some doubt about
11 that? Is that your testimony?

12 A. I don't doubt that it has the information. I just don't
13 know who created it. And the more I look at the document, I
14 just don't have a good recollection of where I got it from. So
15 it's -- I'm not walking away from this document being in my
16 notes. That is my handwriting, at least I believe it to be.

17 Q. Well, I --

18 A. And I just don't know who created it, and I believe that
19 information is consistent with the information that I got back
20 from the traders.

21 Q. Well, I want to press you just a little bit on that. I
22 understand you now say that it's consistent with the
23 information that you received from the traders, but my question
24 is a little more specific, and that is, whether the information
25 that you got from the traders is, in fact, recorded on this

1 document?

2 A. Well, again, I believe it is. I didn't get the
3 information directly from the traders, as I testified. And it
4 went into this document. These haircuts, which we didn't use
5 as haircuts before -- we talked about them as adjustments or
6 the bid you'd get for selling your -- the amount you'd get for
7 selling your positions over that short period of time, looked
8 roughly consistent with what information I got at that time.

9 Q. Well, is it roughly consistent, sir, or is it consistent?

10 A. Well, I don't have the information. And since it was
11 never given to me directly, I'm recalling from memory and I'm
12 saying it's roughly consistent.

13 Q. Okay. You don't know whether it's more than roughly
14 consistent?

15 A. I'm saying it's roughly consistent.

16 Q. Okay. And I'm asking you whether you can tell me if it's
17 -- if to your recollection it's more than roughly consistent
18 and, in fact, reflects the information that you received from
19 the traders on the morning of the 19th.

20 A. I think you're looking for more precision than I can give
21 you. I don't know if you're asking is it more rough or less
22 rough. It's roughly consistent with what I recollect. I like
23 these figures, I'll stand by them. They work generally with
24 what I recollect from that week and that day.

25 Q. Okay. And by the way, sir, is this one of the documents

1 that you discussed with the Barclays' lawyers over the last
2 couple days in preparation for your testimony here?

3 A. They asked me about it, and I actually told them very much
4 the same thing this morning, that when I look at that document,
5 I just can't bring up who made it and exactly how the
6 information got into it.

7 Q. But it was something that you discussed with them either
8 Sunday, yesterday or today?

9 A. Very much this morning along these lines.

10 Q. Okay. Let's look at the document. And I want to -- I
11 just want to have you kind of walk me through it if we could,
12 starting at the very top line. There's a reference there to
13 long Fed facility. Do you see that?

14 A. Yes.

15 Q. And does that -- is that intended, to your knowledge, to
16 reference the Fed REPO and the collateral that was pledged for
17 the Fed REPO?

18 A. I believe this is to be a summary of the assets that had
19 been contained in the Fed REPO before the trade with Barclays.

20 Q. Okay. And then there's -- under long Fed facility, it
21 says asset type. Do you see that?

22 A. Yes.

23 Q. And then there's -- these are various asset types that
24 were used as collateral for the REPO facility that are listed
25 there; is that correct?

1 A. That's my understanding, that those are the asset types
2 that were in that Fed facility, correct.

3 Q. Okay. And then there's a -- if we move across, there's an
4 entry that says Lehman MV dollars and billions. Do you see
5 that?

6 A. Yes.

7 Q. And that's the Lehman market value, correct?

8 A. That would be the Lehman market value which Lehman would
9 have had as their mark on the books at that time, yes.

10 Q. And I just want to make sure, because those words are so
11 closely -- are so similar that there isn't any confusion.
12 Those numbers would, in fact, reflect the Lehman market value,
13 correct?

14 A. These are the amounts that Lehman had marked on their
15 books and what Lehman's books showed as the market value.
16 Whether the market actually would -- whether you would be able
17 to exceed or obtain that value is part of the discussion I had
18 with the traders.

19 Q. And let me direct your attention, if I could, sir, to page
20 273 of your deposition. And for the sake of completeness, I'm
21 going to read a few more lines than beyond the first question.
22 But --

23 "Q. What is Lehman MV?

24 "A. Market value.

25 "Q. And what does that refer to?

1 "A. That is the mark.

2 "Q. And does that, to the best of your
3 recollection, reflect the market value that Lehman had
4 on its books as of September 19?

5 "A. That would reflect that mark that Lehman had
6 on its book as of that date."

7 And that was your testimony, correct?

8 A. And if you read further, it basically says exactly what I
9 just said.

10 Q. And the -- and that is intended to reflect some
11 uncertainty on your part about whether the Lehman market value
12 was, in fact, the market value on the 19th, correct?

13 A. That's correct.

14 Q. All right. Then the next entry across that line says
15 haircut. Do you see that?

16 A. Are we going back to the --

17 Q. Yes. We're back to --

18 A. I assume we're going back to --

19 Q. Yeah. We're back away from the deposition. I apologize,
20 sir.

21 A. Okay.

22 Q. But back to page -- the last page of Exhibit 147, and in
23 particular, the word haircut there, which we hadn't used
24 previously. But that was intended to reflect -- or is
25 consistent with -- withdrawn.

1 The data that appears under haircut, is consistent with
2 the information that you received back from the Lehman traders,
3 or roughly consistent with it, correct, sir?

4 A. I believe that's correct, yes.

5 Q. And the -- that information is intended to reflect the
6 liquidation values that the Lehman traders provided you with
7 pursuant to the instructions that you gave them on the morning
8 of the 19th, correct?

9 A. I do believe that information is consistent with my
10 request and shows their input.

11 Q. And just to make sure that the record is clear, it does,
12 in fact, reflect the liquidation bids that you sought from the
13 traders with respect to liquidation bids for all of the assets
14 in the Fed facility if they sold it at its full size, correct,
15 sir?

16 A. This was for categories, not for the specific assets.

17 Q. Well --

18 A. The list of the assets is, you know, a couple hundred
19 pages long at least.

20 Q. Let me direct you -- let me ask you the question one more
21 time, sir.

22 The information that's reflected under haircut is, in
23 fact, consistent with or roughly consistent with the
24 information that the Lehman traders gave you, in response to
25 your request for information on liquidation bids for all of the

1 assets in the Fed facility if they were sold at its full size,
2 correct?

3 A. Let me back up for one second just to make sure we're
4 clear. The traders didn't get from me a list of all of the
5 assets in the Fed facility. What they got were categories.
6 And what we tried to do was have them apply their view of the
7 market to those categories and the growth sizes that had been
8 in that Fed facility prior to it going to Barclays. So they
9 didn't have a list of every securities. They knew what their
10 own securities were, but they don't know whether they're
11 pledged to the Fed or not. So these are categories. And if I
12 said something that implied a scientific precision, what I've
13 tried to explain at deposition and here today, is there wasn't
14 scientific precision to this exercise.

15 Q. I'm not really asking about scientific precision, sir.
16 What I'm asking you is whether the information in the column
17 under haircut is roughly consistent with the information that
18 you received back from the Lehman traders, in response to your
19 request for information on liquidation bids that would be
20 attainable in the event that the Fed facility was sold at its
21 full size.

22 A. Again, if I testified that they looked at the Fed
23 facility, my apologies. This is their categories. This is
24 roughly consistent with what they gave me in those categories.
25 If you'd stopped your question right at when you said respect I

1 think, then the answer would be absolutely yes, without any
2 kind of qualification. I just don't have -- and they did not
3 have, to my knowledge, any list of the securities that had
4 actually been pledged. They knew the categories and the size.

5 Q. Let me direct your attention, if I could, sir, to page 273
6 of your deposition. Are you there?

7 A. Yes.

8 Q. And in particular, to the question that begins on line 19:

9 "Q. And is that what the Lehman traders were
10 reporting would be the discount that would need to be
11 given to buyers if there was a liquidation bid for all
12 of the assets in the Fed facility if they sold it at
13 its full size?

14 "A. That's my recollection, yes."

15 That was your testimony; was it not, sir?

16 A. That was. I definitely qualify that. That's just not the
17 case, because again, I didn't show them the full size and they
18 didn't have the facility.

19 Q. And let me direct your attention now to page 276 of your
20 deposition, sir.

21 A. Uh-huh.

22 Q. And in particular, to the question that begins on line 4:

23 "Q. But this is the number that the Lehman
24 trader --"

25 That should probably be traders --

1 "-- came back after hearing your instruction that
2 you wanted the view as to a liquidation bid as to the
3 assets if you sold the full size and what discount you
4 would give to the buyer?

5 "A. That's correct."

6 That was your testimony; was it not, sir?

7 A. And I agree with that now.

8 Q. Okay. Let's go back if we could to Exhibit 147 and to
9 page 70 of the document if we could. We've covered I think all
10 the columns except the last column at this point. And am I
11 correct, sir, that the last column reflects the application of
12 a percentage discount to the particular asset classes?

13 A. I believe that's just the math, yes.

14 Q. Okay. So, for example, agency PT's. What are PT's?

15 A. Pass-throughs.

16 Q. So agency pass-throughs. The Lehman market value was 9.51
17 billion, correct?

18 A. That's correct.

19 Q. And then there was a five percent discount that was --
20 that the traders came up with, consistent with the instructions
21 that you gave them, correct?

22 A. I believe so, yes.

23 Q. And then the .48 billion reflects five percent times the
24 9.51 billion, correct?

25 A. That's correct.

1 Q. And that same methodology would apply to all of the lines
2 -- all of the rows under the long facility, correct?

3 A. That's correct.

4 Q. Okay. Now the total under long facility totals up to a
5 6.04 --

6 (Transcriber note: Recording ended and started, no overlap.)

7 Q. -- dollars discount for these liquidation bids that your
8 traders came back with, correct?

9 A. That's correct.

10 Q. All right. And then you said, I think, that the 45.5 and
11 the 1.9 billion reflected your handwriting, correct?

12 A. Yes, they did.

13 Q. And the 45.5 reflects the -- well, let me just ask you.
14 Withdrawn.

15 Is the 45.5 intended to reflect the information that the
16 Lehman traders provided you with concerning the liquidations
17 bids that you requested for these assets?

18 A. Unfortunately, I don't think it does, simply because the
19 math doesn't work.

20 Q. So what is the 45.5 then, sir?

21 A. I don't recollect specifically. I thought that was the
22 general view of the value at that time. And what doesn't make
23 sense, and I think I testified at my deposition, the number
24 that's crossed out, which I don't know if you can see on that
25 screen, I believe is 50.6 something, and minus 6.04 does not

1 come to 45.5.

2 Q. Right. In fact, it's 50.64 was in the original, correct,
3 sir?

4 A. Correct.

5 Q. And the 6.04 off that would come up to something less than
6 45.5, correct?

7 A. It would.

8 Q. But I think you testified earlier that you weren't engaged
9 in a scientifically precise exercise, correct?

10 A. No, but I can do the math.

11 Q. All right. Is the 45.5 -- was the 45.5 when you wrote it
12 on that page, intended to reflect the view after the Lehman
13 traders exercise of the liquidation of the assets in the fed
14 repo?

15 A. I'm not so sure again, because the six -- I don't recall
16 when I wrote the 45.5 and the math doesn't work. Again, to
17 your point, it wasn't supposed to have precision. The 6.04
18 doesn't make a lot of sense, but it's just applying the
19 percentage haircuts to those numbers, and that's what you come
20 up with. I just don't know when I put the 45.5 there. That's
21 in the ballpark though of these numbers for sure.

22 Q. Well, do you have any reason to think, sir, that you put
23 the 45.5 there at some point other than the morning of
24 September 19th of 2008?

25 A. It was in that timeframe. I don't know.

1 Q. That was the time when you were working on this project;
2 wasn't it, sir?

3 A. It was, yes.

4 Q. And that was the time that you were receiving the
5 information back from the Lehman traders in response to the
6 directive that you gave them, correct?

7 A. I was. But if the numbers were delivered and put into
8 this form, then I wouldn't have needed to recalculate that. I
9 would have just had the addition done, the subtraction of the
10 50.6, the 6.05, and 6.04, hence, my uncertainty about this
11 particular exhibit.

12 Q. The numbers are pretty close, are they not, sir, 45.5
13 versus 44. -- I guess it would be 44.6?

14 A. I believe they are very close, yes.

15 Q. Okay. And let me ask you about the 1.9 billion number
16 that appears on that sheet. That reflects, does it not, the --
17 some additional assets that were put into the deal on Friday
18 morning in response to Barclays' request for more assets,
19 correct?

20 A. I don't know when they were put into the deal. And that's
21 another one of the confusions I have. I just don't know when I
22 would have added that 1.9.

23 Q. Okay. You do recognize the 1.9 as relating to what's been
24 described as the unencumbered box, don't you, sir?

25 A. That's correct, yes.

1 Q. Okay. And 45.5 and 1.9 work out to 47.4; do they not,
2 sir?

3 A. That would be the math, yes.

4 Q. All right. And then this -- the sheet that we're talking
5 about, you don't have any doubt, do you, sir, that this was a
6 sheet that was considered by you in connection with the work
7 that you did with the Lehman traders on the morning of the
8 19th?

9 A. Well, I expressed some reservation. I believe it is
10 correct. I just didn't -- and follows that line. I expect I
11 already expressed some reservation about it.

12 Q. Okay. And then whatever the numbers were, after you got
13 back the information from the Lehman traders, did you come up
14 with a number that you thought was the number that reflected
15 the assignment that you had given them in response to
16 Mr. Ridings' request?

17 A. I'm sorry. I don't quite understand.

18 Q. That was a little confusing. There seems to be some
19 confusion about exactly what the number was that was derived
20 from the Lehman traders' work, so I want to take the exact
21 number out of the equation for the moment and just ask you more
22 generally.

23 Some number was arrived at as a result of the Lehman
24 traders work done at your directive, correct?

25 A. Yes, that's correct.

1 Q. Okay. And since we don't know right now what that number
2 is, what I want to ask you is whether you would have reported
3 whatever the number was to someone else in Lehman or to some
4 professionals associated with Lehman?

5 A. Yes, I would have.

6 Q. And would Alex Kirk have been one of the people that got
7 that information?

8 A. I expect he would have been.

9 Q. And would Barry Ridings have been one of the people who
10 got that information?

11 A. Yes.

12 Q. And when you gave them the information, did you explain to
13 them how it is that you came up with whatever numbers you gave
14 them?

15 A. Yes.

16 Q. And would your explanation have been consistent with what
17 we've talked about previously, that you were asking your
18 traders to get a liquidation bid for a quick sale of all the
19 assets at once?

20 A. Exactly as I previously described, yes.

21 Q. Okay. So the answer to my question is yes?

22 A. I think you keep couching it in terms of -- you know, we
23 went through this. Each of the traders looked at their
24 respective assets. We didn't -- I don't recollect showing them
25 the full book. They looked at how their categories of assets

1 would be liquidated in the market. They came back with the
2 numbers. Those are, I believe reflected on this sheet, and it
3 is roughly consistent with my recollection.

4 Q. Let me direct your attention, if I could, sir, to page 282
5 of your deposition. Are you with me?

6 A. I will be.

7 Q. And there's some questions about Mr. Ridings and Mr. Kirk.
8 Do you see those there?

9 A. Yes.

10 Q. Okay. And then beginning at line 15, there's a question:

11 "Q. What about generally, what did you report?

12 "A. Generally, here's the numbers they're
13 reporting back if we had to do a fast liquidation. I
14 don't recall if I had a view about whether those were
15 liberal or conservative. I just don't remember."

16 That was your testimony, correct, sir?

17 A. Yes.

18 Q. And then the 45.5 billion number that's handwritten --
19 we're going back to 147 now. I apologize for jumping around on
20 you, sir.

21 A. Yes.

22 Q. But the 45.5 billion number that's handwritten on page 70
23 of Exhibit 147, that's a number that you gave to the committee
24 on September 19th; is it not?

25 A. I don't recollect. It's certainly in the neighborhood of

1 the numbers we talked about.

2 Q. All right. Now let me direct your attention to Exhibit
3 568, M-568.

4 A. Yes.

5 Q. That's your declaration, correct, sir? That's the
6 declaration that you signed in January of 2006, correct?

7 A. That's correct.

8 Q. And directing your attention to paragraph six. Does
9 reviewing paragraph six refresh your recollection that you
10 advised the committee on September 19th that the -- of the 45.5
11 billion dollar number?

12 A. It does and that is consistent with the notes that are
13 attached.

14 Q. Okay. And is it fair to assume that in preparing this and
15 reviewing this declaration and signing it, you tried as hard as
16 you could to be accurate and to accurately summarize the
17 communication that you had had with the committee?

18 A. Accepting your tried as hard as you could, I believe it's
19 accurate.

20 Q. Okay. And there's no references there, sir, in paragraph
21 six to an exercise with the Lehman traders to come up with
22 liquidation bids that would be attainable if you sold the full
23 size of the position in a relatively quick manner, correct?

24 A. I didn't reference it, no.

25 Q. Okay.

1 A. I was looking at Mr. Burion's (ph) notes, and that's what
2 I derived my recollection from. Those do show haircuts which
3 are consistent with the numbers that we just talked about. But
4 I don't -- I didn't reference those in paragraph six, no.

5 Q. My question was a little bit different though, sir, and
6 that is that in describing what information you provided to the
7 committee on the 19th, your description did not include a
8 description of an effort or a project, a brief project at
9 Lehman, to come up with the liquidation bids that would be
10 attainable if you sold the full size of the position relatively
11 quickly, correct?

12 A. Paragraph six does not reference that, no.

13 Q. All right. Let me direct your attention to paragraph
14 seven. And you talked about the -- well, let me just ask you a
15 question after you have a moment to review paragraph seven.

16 A. Yes.

17 Q. Okay. And is -- am I correct in assuming that the
18 exercise that is referred to in paragraph seven is the exercise
19 that we've been discussing for most of your testimony here
20 today?

21 A. It is with the exception that when I look at these notes
22 in the context of that last exhibit, its categories. I don't
23 know that they went to Barclays. It's just says has that
24 facility. I don't know that those are the exact same assets.

25 Q. Okay. Well, the specific question though is the exercise

1 that your -- that you discussed with the committee is the same
2 exercise that we've been talking about for the last couple of
3 hours, correct?

4 A. Yes.

5 Q. And you didn't make any reference in describing that
6 exercise to the committee to the instructions that you gave to
7 the traders to come up with liquidation bids that would be
8 attainable if you liquidated the entirety of the position
9 relatively quickly, correct?

10 A. I don't know how you made that assumption. I don't
11 recollect testifying to that just now. You just --

12 Q. Well, there's no reference to liquidation bids in
13 paragraph seven, is there, sir?

14 A. It says that -- it says what it says. It says the Lehman
15 traders independently assessed what it would be like to sell
16 that collateral in those stressed market circumstances.

17 Q. And that's the -- this is more or less what you told the
18 committee on the 19th, correct?

19 A. I don't know exact -- this doesn't reference what I told
20 the committee, nor does it purport to say exactly what I told
21 the committee.

22 Q. Well, the entire subject of the declaration relates to
23 what you told the committee, doesn't it, sir?

24 A. It relates to Mr. Burion's notes, which reference
25 discussions about the 50.6 billion of assets, the 5 billion of

1 haircut, the 45.5 of value, and these other closed out
2 positions, and then onto another page. I can't really read the
3 writing, but it seems to have haircuts.

4 Q. But the notes --

5 A. I didn't purport to say exactly what I said to the
6 committee in this paragraph. I don't have a specific
7 recollection of exactly what I said to Saul in terms of whether
8 it was a liquidation bid. I did say that the traders went out
9 and gave us view as to the value.

10 Q. Okay. And there isn't any reference here, and there
11 wasn't any reference in the communication you made to Mr.
12 Burion to an instruction to the traders to develop liquidation
13 bids, correct, sir?

14 A. I don't recollect specifically if I said what we did. I
15 did tell him that we had our traders give us a view as to the
16 market value at that time.

17 Q. And let me just ask you directly, sir. You didn't tell
18 the committee that the values that were reflected in the 45.5
19 were liquidation values, correct?

20 A. Again, I did tell the committee that we had our traders
21 look at it. And we had questions about the 50.6 being the
22 value. And Burion probed and asked me quite a bit about why we
23 had that view.

24 Q. Let me direct your attention to page 305 of your
25 deposition, sir. And in particular to line 12. Are you with

1 me?

2 A. 305?

3 Q. Yes.

4 A. Yes.

5 Q. Line 12:

6 "Q. More generally, is there any time that you,
7 prior to the sale hearing, told anybody at the
8 committee about this process of the Lehman traders
9 gathering information about a potential haircut for
10 this sort of liquidation discount value?

11 "A. I don't recall right now."

12 That was your testimony, correct, sir?

13 A. Give me one second, please. I believe I told -- I don't
14 recall the specifics in line 8 to 11, and I don't recall, at
15 that time, when I was giving this deposition, specifically what
16 I said. And I still don't recall as I just testified --

17 Q. Okay.

18 A. -- specifically what I said prior to the sale hearing.

19 Q. All right. You were in court during the sale hearing on
20 the afternoon of the 19th; were you not, sir?

21 A. I was.

22 Q. And you heard Lehman's lawyer Ms. Fife describe the
23 current value of the assets in the deal as being 47.4 billion
24 dollars, correct?

25 A. I definitely heard Ms. Fife speak, and I don't recall the

1 specifics of everything that was said. But I was here for the
2 entire hearing, including the breaks.

3 Q. And so, if Ms. Fife reported a value of 47.4 billion --

4 A. I would have heard.

5 Q. -- you would have heard that, correct?

6 A. Yes.

7 Q. All right. And did you also hear Ms. Fife attribute that
8 number to a drop in the markets?

9 A. I've seen that in looking at testimony, but I did not -- I
10 do not have any recollection of that.

11 Q. Did you hear anything during the course of the discussion,
12 either on the record or off the record, when the deal was
13 presented outside of Judge Peck's presence to an effort that
14 you undertook with the Lehman traders to develop liquidation
15 bids for the entirety of the fed portfolio sold en masse on a
16 relatively quick basis?

17 A. I don't believe that there was any discussion of the
18 preparation of Mr. Ridings with the work that I did with the
19 traders.

20 Q. Okay. Do you know whether Ms. Fife -- I'll just ask you.
21 I'll represent to you that Ms. Fife presented a 47.4 billion
22 dollar number. And I'll ask you whether you know whether she
23 got that number from you.

24 A. I don't know. I don't think so, but I don't know.

25 Q. That number is consistent with the number, the 47.4

1 billion, that you have written on the last page of Exhibit 147;
2 is it not, sir?

3 A. It is consistent with that number, yes.

4 Q. And when you heard that number presented in court on the
5 afternoon of the 19th, did you recognize it as a number that
6 you had seen or heard before?

7 A. I don't recall if I had seen or heard it before or I wrote
8 it at the hearing. I just don't know.

9 Q. Is it your testimony that you may have written the
10 47 -- the 45.5 and the 1.9 billion at the hearing?

11 A. It's my testimony that I don't know.

12 Q. Okay. In any event, you didn't take any steps at the sale
13 hearing on the 19th to advise anyone that an effort had been
14 made to come up with liquidation bids that came in with a
15 number in the vicinity of 45 billion, did you, sir?

16 A. That's not true.

17 Q. Who did you advise of that, sir?

18 A. Mr. Ridings.

19 Q. Your testimony is that you told Mr. Ridings on the
20 afternoon of the 19th that a -- that liquidation bids had been
21 used?

22 A. My testimony is that we did the work for Mr. Ridings, and
23 I previously testified --

24 Q. Oh, I'm sorry.

25 A. -- to you what I told him.

1 Q. I'm sorry. You told Mr. Ridings. I'm -- yeah, okay. I
2 should have -- I apologize. I misunderstood your answer.

3 The question that I really wanted to ask was anyone other
4 than a Lehman professional, did you tell them -- did you tell
5 anyone other than a Lehman professional on the 19th about the
6 fact that you had commissioned the Lehman traders to go out and
7 develop these liquidation bids?

8 A. At the hearing?

9 Q. Yes.

10 A. At the hearing, I don't believe so.

11 Q. Okay. Let me ask you, sir, going back to the Friday
12 morning valuation exercise, what was the role, if any, of
13 Barclays' traders in the process that your traders undertook at
14 your direction on the morning of the 19th?

15 A. There was none.

16 Q. Isn't it a fact, sir, that the Barclays' traders came over
17 to Lehman on the morning of the 19th to work with people on
18 valuation exercises?

19 A. Not that I was aware of.

20 Q. Let me direct your attention, if I could, to Exhibit 658,
21 sir, see if that refreshes your recollection. And you're not
22 on this so, but if you look at the bottom of -- are you with me
23 on 658?

24 A. I am, yes.

25 Q. Okay. So the earliest in time e-mail is an e-mail from

1 Ian Lowitt to various people at Lehman, correct?

2 A. Yes.

3 Q. And are any of the individuals who are the recipients the
4 -- among the people that were involved in the exercise that you
5 conducted on the morning of the 19th?

6 A. Not that I recall, no.

7 Q. Okay. And does this e-mail that says "Barclays' teams are
8 way -- on their way over to meet with us on our positions and
9 marks," obviously critical, does that refresh your recollection
10 about any participation that Barclays' traders may have had in
11 your traders' efforts on the 19th?

12 A. They didn't -- no, it does not. They didn't have any role
13 in my exercise.

14 Q. You're sure? And how do you know that, sir?

15 A. I'm the one who gathered them in that room. Hornick had
16 them go do the work. It was very quick. They did it right on
17 the trading floor. I don't recollect seeing any Barclays'
18 traders on that trading floor. They had no role whatsoever.

19 Q. All right. Let me direct your attention finally, sir, to
20 Exhibit M-45. Have you seen this document before, sir?

21 A. No, I have not.

22 Q. Was it a document that was discussed in your preparation
23 session with the Barclays' lawyers yesterday and today?

24 A. I would have said I'd seen it. I have not seen it before.

25 Q. Did you have any discussion with the Barclays' lawyers

1 about the fact that a version of the chart that appears as page
2 70 of Exhibit 147 was actually created at Barclays early in the
3 morning of the 19th?

4 A. I heard them mention it. I have disagreement with that.
5 It just doesn't seem consistent. No one from Barclays gave it
6 to me. I don't know how it would have gotten in my notes if
7 that was the case.

8 Q. So they -- so -- first of all, the answer to my question
9 is you did discuss the fact that there was a document that he
10 had the long fed facility and Lehman market values and haircuts
11 that was created in Barclays on the morning of the 19th, you
12 discussed that with the Barclays' lawyers?

13 A. I was asked if the document came from Barclays. I said
14 no.

15 Q. So you don't -- and -- but you don't, in fact, know one
16 way or the other whether it did come from Barclays, correct?

17 A. I don't know exactly where it came from. I know I didn't
18 receive it from anyone from Barclays.

19 Q. Well, if the document -- let me just ask you to assume
20 that the document existed on Barclays' system at 7:00 o'clock
21 in the morning on the 19th. Can you make that assumption, sir?

22 A. You've asked me to do it, I can do it.

23 Q. And that would have pre-existed the exercise that you've
24 described your traders going through, wouldn't it, sir?

25 A. That's correct.

1 Q. Okay.

2 MR. WERDER: No further questions.

3 MR. GAFFEY: No questions for Lehman Brothers Holding.

4 MR. UNIDENTIFIED: No questions, Your Honor.

5 MR. BOIES: Your Honor, I have as much time on my
6 cross as counsel did on his direct. Do you want to continue or
7 would this be a good time to adjourn? So we're not going to
8 finish this evening is my point to Your Honor.

9 THE COURT: Well, as much time as we just experienced
10 would be most of tomorrow morning.

11 MR. BOISE: Yes, Your Honor.

12 THE COURT: Okay. Well, let's break.

13 MR. BOISE: Thank you, Judge.

14 THE COURT: We'll break until tomorrow morning at
15 9:30. We're adjourned until then.

16 (Whereupon these proceedings were concluded at 5:32 p.m.)

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I N D E X

T E S T I M O N Y

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

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